

APPENDIX B

Condensed Transcript Report

Plaintiffs' Affirmative Designations to which Defendants Object Based on Lack of Personal Knowledge

Prevoznik, Thomas 04-18-2019

Prevoznik, Thomas 05-17-2019

Plaintiffs' Affirmatives 00:24:37

Total Time 00:24:37



1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF OHIO

3 EASTERN DIVISION

4 - - -

5 IN RE: NATIONAL : HON. DAN A.

6 PRESCRIPTION OPIATE : POLSTER LITIGATION :

7 : APPLIES TO ALL CASES : NO.

8 : 1:17-MD-2804 :

9 - HIGHLY CONFIDENTIAL -

10 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

11 VOLUME II

12 - - -

13 April 18, 2019

14 - - -

15

16 Continued videotaped deposition of THOMAS PREVOZNIK, taken

17 pursuant to notice, was held at the law offices of Williams & Connolly,
725 12th

18 Street, Washington, D.C., beginning at 8:16 a.m., on the above date,
before

19 Michelle L. Gray, a Registered Professional Reporter, Certified

20 Shorthand Reporter, Certified Realtime Reporter, and Notary Public.

21 - - -

22 GOLKOW LITIGATION SERVICES

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 5 THOMAS PREVOZNIK
 6
 7 By Mr. Stephens 430
 8 By Mr. Farrell 597
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 13 EXHIBITS
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 15
 16 NO. DESCRIPTION PAGE
 17 DEA Prevoznik-15 Hearing Before 437
 18 The Subcommittee On Oversight and
 19 Investigations 5/8/18
 20 Challenges and Solutions in the
 21 Opioid Crisis
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 4
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 6 DEA Prevoznik-21 (Clawed Back) 585
 7 US-DEA-00011196-98
 8 DEA Prevoznik
 9 P-1 21 USCA 801 685
 10 DEA Prevoznik
 11 P-2 House Report No. 686 91-1444
 12 9/10/70
 13 DEA Prevoznik
 14 P-3 HathiTrust 686 Drug Abuse Control
 15 Amendments 1970
 16 DEA Prevoznik
 17 P-4 Proposed Rule 687 Making, Part 301
 18 Federal Register Vol. 36
 19 3/13/71
 20 DEA Prevoznik
 21 P-5 Rules & Regulations 688 Title 21 Food and
 22 Drugs Federal Register
 23 Vol. 36 4/24/71
 24

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 4
 5 NO. DESCRIPTION PAGE
 6 DEA Prevoznik-16 DEA Letter, 450
 7 9/27/06 In Re: In Reference
 8 To Registration US-DEA-00022459
 9 DEA
 10 Prevoznik-17 Hearing Before 466 The Subcommittee
 11 On Oversight and Investigations
 12 3/20/18 The Drug Enforcement
 13 Administration's Role In Combating the Opioid
 14 Epidemic
 15 DEA Prevoznik-18 Hearing Before 473
 16 The Committee on the Judiciary US Senate
 17 5/16/17 Rogue Online Pharmacies
 18 DEA
 19 Prevoznik-19 DEA Announces Tool 536 For Registered
 20 Drug Manufacturers
 21 DEA Prevoznik-20 Hearing Before the 571
 22 Permanent Subcommittee On Investigations
 23 Combatting the Opioid Crisis
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 2 EXHIBITS (Cont'd.)
 3 - - -
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 5 NO. DESCRIPTION PAGE
 6 DEA Prevoznik
 7 P-6 21 CFR 1301.74 688
 8 DEA
 9 Prevoznik P-7 NWDA Suspicious 689
 10 Order Monitoring System
 11 CAH-MDL2804-01465723-34
 12 DEA Prevoznik
 13 P-8 Plaintiff Cardinal 691 Health Reply in Support
 14 Of Motion for Preliminary Injunction
 15 DEA
 16 Prevoznik P-9 CSMP Page 16 691
 17 MCKMDL00409239
 18 DEA Prevoznik
 19 P-10 DEA Letter 703 Request No. 03-1134-F
 20 Subject, Diversion Investigators Manual
 21 CAH-MDL2804-02203353-57
 22
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 2 EXHIBITS (Cont'd.)
 3 - - -
 4
 5 NO. DESCRIPTION PAGE
 6 DEA Prevoznik
 7 P-11 Report to the 709 US Attorney General
 8 By the Suspicious Orders Task Force
 9 October 1998 CAH_HOUSE_002207-98
 10 DEA
 11 Prevoznik P-12 Reservation of Rights 730
 12 Cardinal Health's Third Supplemental Objections
 13 DEA
 14 Prevoznik P-13 Chemical Handler's 754
 15 Manual A Guide to Chemical Control Regulations
 16 1/2004 CAH 032635-703
 17 DEA
 18 Prevoznik P-14 DEA Letter, 9/27/06 760
 19 In Re, In Reference To Registration
 20
 21 DEA Prevoznik
 22 P-15 DEA Letter, 12/27/07 764 In Re, In Reference
 23 To Registration ABDCMDL00269685-86
 24

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 9 Request for Production of Documents
 10 PAGE LINE
 11 None.
 12 Stipulations
 13 PAGE LINE
 14 None.
 15 Questions Marked
 16 PAGE LINE
 17 None.
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 2 EXHIBITS (Cont'd.)
 3 - - -
 4
 5 NO. DESCRIPTION PAGE
 6 DEA Prevoznik
 7 P-16 Federal Register 772 Vol. 73 9/10/08
 8 08-33
 9
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1 - - -
 2 THE VIDEOGRAPHER: Good
 3 morning. Today is April 18, 2019,
 4 8:15 a.m., and this is the
 5 continuation of the deposition of
 6 Thomas Prevoznik.
 7 - - -
 8 ... THOMAS PREVOZNIK, having
 9 been previously sworn, was
 10 examined and testified as follows:
 11 - - -
 12 THE VIDEOGRAPHER: I
 13 apologize. We need to go off the
 14 record. 8:16. We are off the
 15 video record.
 16 (Brief pause.)
 17 THE VIDEOGRAPHER: 8:18, we
 18 are on the video record.
 19 - - -
 20 EXAMINATION
 21 (Continued)
 22 - - -
 23 BY MR. STEPHENS:
 24 Q. Mr. Prevoznik, good morning.

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1 A. Good morning.
 2 Q. Let me introduce myself.
 3 I'm Neal Stephens.
 4 MR. FINKELSTEIN: Guys.
 5 BY MR. STEPHENS:
 6 Q. I represent Jones Day, and
 7 I'm asking you questions on behalf of the
 8 retail pharmacies. You remember that
 9 from yesterday, right?
 10 A. Yes, I do.
 11 Q. Okay. So let me -- let me
 12 go back to where we were yesterday. And
 13 we were talking through --
 14 A. Could I just clarify
 15 something from yesterday, please?
 16 Q. Sure.
 17 A. Okay. First of all I want
 18 to thank everybody for allowing me to try
 19 to catch my train. Of course with DC
 20 around here, my train was delayed. And
 21 while I was delayed, I went to our
 22 website because I was reflecting on my
 23 testimony earlier.
 24 And one of the things that

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1 Q. Correct.
 2 A. Both were Inner Harbor in
 3 Maryland.
 4 Q. Okay. And the 2015 was in
 5 Maryland as well?
 6 A. Yes.
 7 Q. All right. Thank you for
 8 that.
 9 And if I could,
 10 Mr. Prevoznik, I'd like to go back to
 11 where I ended last evening and pick back
 12 up there again today. I just have a few
 13 predicate questions to ask you before we
 14 go back into it. Okay.
 15 A. Yes.
 16 Q. All right. We were talking
 17 through Topic 2 and Topic 3 of your
 18 30(b)(6) designation. And would you
 19 agree that who is diverting in the
 20 marketplace is relevant to how someone is
 21 designing their SOMs program?
 22 MR. FINKELSTEIN: Objection.
 23 Vague.
 24 THE WITNESS: Could you

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1 came up was guidance as well as
 2 conferences. And I know I didn't mention
 3 the conferences and the dates. So I just
 4 went to our website. And on our website
 5 we do have meetings and it has past
 6 meetings. So I just looked on there. I
 7 want to be able to say that in 2007 and
 8 2009, '7 was in Houston, 2009 was in
 9 Oregon, Portland.
 10 Those were pharmaceutical
 11 industry conferences. That was
 12 wholesalers, distributors, some
 13 importers. So those conferences were
 14 there.
 15 And then somehow I
 16 completely forgot about the
 17 manufacturers, importers, and exporter
 18 conferences that were in '13 and '15, in
 19 particular the '15 one because I actually
 20 gave a presentation. So I apologize for
 21 that. But I just wanted to clarify that.
 22 Q. Where was the location of
 23 the 2013 conference?
 24 A. The manufacturers?

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1 expand on --
 2 BY MR. STEPHENS:
 3 Q. DEA looks to where diversion
 4 is occurring in the United States, right?
 5 A. Correct.
 6 Q. Where it's happening in the
 7 marketplace?
 8 A. Correct.
 9 Q. Okay. My point is when
 10 you're designing a SOMs system, it's
 11 relevant where diversion is occurring as
 12 to how you develop your SOMs system,
 13 right?
 14 MR. FINKELSTEIN: Objection.
 15 Vague.
 16 THE WITNESS: Well, within
 17 the closed system of distribution,
 18 the whole -- the whole point of
 19 the system is to have effective
 20 means to guard against diversion.
 21 So each -- it's all
 22 interconnected.
 23 So I don't want to say one
 24 is more important than the other

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1 one because each step affects the
 2 next step --
 3 BY MR. STEPHENS:
 4 Q. Okay, but.
 5 A. -- in either direction.
 6 Q. Okay. Sorry. I didn't mean
 7 to interrupt you there.
 8 Would you agree that to --
 9 and these are just predicate questions.
 10 To assess if an order is suspicious, it's
 11 relevant where the shipping is going?
 12 A. That's -- yeah.
 13 Q. Okay.
 14 A. That's one of -- yes.
 15 That's one of the --
 16 Q. Not the only criteria --
 17 A. Right. That's one of them.
 18 Q. -- it's one of them.
 19 Okay. So if it's relevant
 20 where it's going, where diversion is
 21 occurring in the marketplace is relevant,
 22 right? One characteristic of relevance?
 23 A. Yes.
 24 Q. Yes, okay. That's the only

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1 are all trying to do right by their
 2 patients. Are you familiar with that?
 3 A. Could I see the testimony?
 4 Q. Sure.
 5 (Document marked for
 6 identification as Exhibit
 7 DEA-Prevoznik-15.)
 8 BY MR. STEPHENS:
 9 Q. Mr. Prevoznik, I marked as
 10 Exhibit Number 15 a hearing dated May 8,
 11 2018, entitled "Challenges and Solutions
 12 in the Opioid Crisis" before the
 13 Committee of the Judiciary, House of
 14 Representatives. I would direct you to
 15 Page 32.
 16 If you look at the top of
 17 32, there's a paragraph that indicates
 18 that Mr. Patterson is talking.
 19 A. Correct.
 20 Q. Do you see that?
 21 A. Yes.
 22 Q. Now, Robert Patterson in
 23 2018 was the director -- I'm sorry, the
 24 administrator of DEA?

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1 point I'm trying to make.
 2 A. Okay.
 3 Q. All right. So I would then
 4 like to continue asking you questions
 5 about DEA's interpretation and
 6 enforcement of the Controlled Substances
 7 Act and the relevant regulations and how
 8 that relates to the design of a
 9 reasonable SOMs system. Okay?
 10 A. Okay.
 11 Q. All right. Now, yesterday
 12 when we stopped, I believe we had just
 13 referred to Exhibit 14, which was
 14 statements that Mr. Rannazzisi had made
 15 to Congress about 99.5 percent of the
 16 prescribers not overprescribing. Do you
 17 recall that testimony?
 18 A. Yes.
 19 Q. Okay. That testimony
 20 occurred in 2014, right?
 21 A. Yes.
 22 Q. Okay. Now, more recently,
 23 in 2018, Mr. Patterson testified in front
 24 of Congress that 99.9 percent of doctors

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1 A. Acting administrator.
 2 Q. Acting administrator.
 3 A. Right.
 4 Q. It's the number one position
 5 at DEA?
 6 A. Correct.
 7 Q. Okay. So here Mr. Patterson
 8 was asked a question, and in part of his
 9 response he says, "But I go back to the
 10 fact that I look at the vast majority of
 11 doctors, 99.99 percent are all trying to
 12 do right by their patients."
 13 Do you see that?
 14 A. Correct.
 15 Q. Did I read that accurately?
 16 A. Yes.
 17 Q. Okay. DEA agrees, as of
 18 2018, that 99.9 percent of doctors are
 19 all trying to do right by their patients,
 20 right?
 21 MR. FINKELSTEIN: Scope.
 22 THE WITNESS: I don't -- I
 23 mean, he's stated that, but I
 24 don't think it's a static number.

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1 So I mean, I think -- it will
 2 fluctuate depending on what a
 3 prescriber eventually does.
 4 BY MR. STEPHENS:
 5 Q. Okay. As of --
 6 A. As of that date, that's what
 7 was said, yes.
 8 Q. Okay. He was the number one
 9 person at DEA when he made that
 10 statement, right?
 11 A. Right.
 12 MR. FINKELSTEIN: Asked and
 13 answered.
 14 MR. FARRELL: Excuse me.
 15 Could you please repeat the
 16 exhibit number?
 17 MR. STEPHENS: Sure. That's
 18 number 15, Paul.
 19 MR. FINKELSTEIN: And wait
 20 for my objections.
 21 BY MR. STEPHENS:
 22 Q. Mr. Prevoznik, if
 23 99.99 percent of prescribers acted
 24 appropriately, the diversion problems DEA

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1 BY MR. STEPHENS:
 2 Q. All right. You would agree
 3 that not all registrants distributed
 4 controlled substances to the one-tenth
 5 of 1 percent of the prescribers who
 6 diverted opioids from 1998 to present?
 7 MR. FINKELSTEIN: Objection.
 8 Scope. Foundation.
 9 Mischaracterizes prior testimony.
 10 THE WITNESS: I'm sorry.
 11 Could you repeat?
 12 BY MR. STEPHENS:
 13 Q. Sure. So we're talking
 14 about the one-tenth of 1 percent, right,
 15 of prescribers?
 16 A. Right.
 17 Q. Okay. You would agree that
 18 not all registrants distributed
 19 controlled substances to the one-tenth of
 20 1 percent of prescribers who diverted
 21 opioids?
 22 MR. FINKELSTEIN: Same
 23 objections.
 24 THE WITNESS: What was the

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1 confronts are generated by the remaining
 2 one-tenth of 1 percent of the
 3 prescribers?
 4 MR. FINKELSTEIN: Objection.
 5 Foundation. Mischaracterizes
 6 prior testimony.
 7 THE WITNESS: If you go with
 8 that number, yes, that's correct.
 9 BY MR. STEPHENS:
 10 Q. Okay. DEA currently has
 11 more than 1.7 million registrants?
 12 A. Correct.
 13 Q. Okay. And as you recall
 14 yesterday, we talked about prescribing
 15 doctors being registrants, right?
 16 A. Yes.
 17 Q. Okay. You would agree --
 18 MR. FINKELSTEIN: I'm sorry.
 19 Can I just interrupt for one
 20 second. Your -- the softness of
 21 your answer is creating problems
 22 for the transcript. I just
 23 noticed. Please speak louder.
 24 THE WITNESS: Okay. Sorry.

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1 time frame?
 2 BY MR. STEPHENS:
 3 Q. 1998 to present.
 4 A. This statement was in 2018.
 5 So the percentage -- the percentage would
 6 have been different of that.
 7 Q. Do you have --
 8 MR. FINKELSTEIN: Tom, a
 9 little louder.
 10 THE WITNESS: Okay. You're
 11 asking me from 1998 forward, and
 12 this statement was made May 8,
 13 2018.
 14 BY MR. STEPHENS:
 15 Q. All right.
 16 A. So the percentage -- that
 17 number would not be 99.99 percent.
 18 Again, it's not a static number that goes
 19 year to year.
 20 Q. In 2014, Mr. Rannazzisi
 21 estimated 99.5 percent, right?
 22 A. Correct.
 23 MR. FINKELSTEIN:
 24 Foundation. Mischaracterizes

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1 prior testimony. Scope.
 2 You can answer.
 3 THE WITNESS: Correct.
 4 BY MR. STEPHENS:
 5 Q. That's one-half of one
 6 percent, right?
 7 A. Correct.
 8 Q. 2018, Mr. Patterson said
 9 99.99 percent.
 10 MR. FINKELSTEIN: Asked and
 11 answered.
 12 BY MR. STEPHENS:
 13 Q. That's one-tenth of 1
 14 percent, right?
 15 MR. FINKELSTEIN: Asked and
 16 answered.
 17 You can answer again.
 18 THE WITNESS: Correct.
 19 BY MR. STEPHENS:
 20 Q. Okay. Do you have a number
 21 from 2005?
 22 MR. FINKELSTEIN: Objection.
 23 Scope. You can answer if you
 24 know.

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1 THE WITNESS: With the
 2 pharmacy diversion awareness
 3 conferences, I was with
 4 Mr. Rannazzisi at those
 5 conferences. And when we did the
 6 presentation, so that was from --
 7 when I joined -- when I went to
 8 headquarters in April 2012,
 9 Atlanta was the first PDAC that I
 10 went to. So from that point on,
 11 pretty much every time that we had
 12 a presentation, we would say 1 to
 13 2 percent. So that is the figure
 14 that I know of, 1 to 2 percent.
 15 BY MR. STEPHENS:
 16 Q. Okay. Would you agree then
 17 that not all registrants distributed
 18 controlled substance to the 1 or
 19 2 percent of prescribers who diverted
 20 opioids from 2005 to 2018?
 21 MR. FINKELSTEIN: Objection.
 22 Scope.
 23 THE WITNESS: I believe I'd
 24 be speculating, but -- I would be

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1 THE WITNESS: I don't know.
 2 BY MR. STEPHENS:
 3 Q. Okay. Do you have a number
 4 from 1998?
 5 MR. FINKELSTEIN: Objection.
 6 Scope. You can answer if you
 7 know.
 8 THE WITNESS: I don't know.
 9 BY MR. STEPHENS:
 10 Q. Okay. Do you have any basis
 11 to say that it's less than 99 percent of
 12 prescribers?
 13 MR. FINKELSTEIN: Objection.
 14 Scope.
 15 Counsel, do you have any
 16 questions within the scope of this
 17 notice?
 18 MR. STEPHENS: I've already
 19 established that they are within
 20 the scope.
 21 MR. FINKELSTEIN: We
 22 disagree. We'll let this continue
 23 a little bit longer.
 24 You can answer if you know.

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1 speculating on that, but, yes.
 2 BY MR. STEPHENS:
 3 Q. Okay. I'd like to continue
 4 by asking you some additional questions
 5 about interpretation enforcement of
 6 Title 21 U.S.C. 23, the regulations and
 7 how those relate to the design of a
 8 reasonable SOMs system. Okay?
 9 A. Yes.
 10 Q. Okay. So yesterday you --
 11 you testified about different
 12 distributors having different business
 13 models, right?
 14 A. Correct.
 15 MR. FINKELSTEIN: Objection.
 16 Scope. Characterization.
 17 BY MR. STEPHENS:
 18 Q. Is it fair to say that a
 19 SOMs systems is not a one-size-all
 20 proposition, one-size-fits-all
 21 proposition?
 22 A. Correct.
 23 Q. And DEA understands that not
 24 all registrants distribute opioids to the

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1 same customers, right?
 2 A. Correct.
 3 Q. DEA understands that
 4 registrants have different business
 5 models?
 6 A. Correct.
 7 Q. And DEA expects that each
 8 registrant will review its own business
 9 model and design a SOM system that fits
 10 its specific method of distribution?
 11 MR. FINKELSTEIN: Objection.
 12 Vague.
 13 THE WITNESS: That's correct
 14 as -- as per the regulations.
 15 BY MR. STEPHENS:
 16 Q. Okay. Some registrants
 17 distribute to hospitals?
 18 A. Correct.
 19 Q. Some don't?
 20 A. Correct.
 21 Q. Some registrants distribute
 22 to hospice centers?
 23 A. Correct.
 24 Q. Some don't?

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1 Retail chain pharmacies
 2 commonly use a self-distributing model
 3 where they distribute to chain pharmacy
 4 locations that they own.
 5 MR. FINKELSTEIN: Objection.
 6 Scope. Answer if you know.
 7 THE WITNESS: Some do, and
 8 some have changed.
 9 BY MR. STEPHENS:
 10 Q. Okay. For example,
 11 Walmart's distribution centers only
 12 distributed to Walmart pharmacies at
 13 Walmart store locations?
 14 MS. SINGER: Objection.
 15 MR. FINKELSTEIN: Objection.
 16 Scope. Calls for speculation.
 17 THE WITNESS: That was
 18 correct, yes.
 19 BY MR. STEPHENS:
 20 Q. All right. I'd like to ask
 21 you some questions about Topic 3 related
 22 to the guidance that DEA provides
 23 regarding the adequacy of SOM systems.
 24 Okay?

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1 A. Correct.
 2 Q. Some registrant distribute
 3 to independent pharmacies that the
 4 registrants do not own?
 5 A. Correct.
 6 Q. Some registrants, like
 7 retail chain pharmacies, do not
 8 distribute to independent pharmacies that
 9 they do not own?
 10 A. I don't know if I completely
 11 agree with that. Because you can have --
 12 you could have a -- a
 13 registrant-to-registrant sale of -- a
 14 distribution from a chain store to an
 15 independent store. You can do it. So I
 16 can't say carte blanche that that
 17 doesn't -- hasn't occurred or -- I just
 18 can't say that --
 19 Q. Okay.
 20 A. -- because that's not an
 21 ARCOS reportable transaction.
 22 Q. So let -- let me follow up
 23 with a different question. Come at it
 24 this way.

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1 A. Yes.
 2 Q. All right. DEA expected
 3 that each registrant would take
 4 reasonable steps to avoid shipping
 5 prescription opioids to individuals who
 6 would divert the controlled substances?
 7 A. Is that a question?
 8 Q. Yes.
 9 A. I thought it was a
 10 statement. Yes.
 11 Q. All right. Let me show you
 12 Exhibit 16 which will be the dear
 13 registrant letter dated September 27,
 14 2006.
 15 (Document marked for
 16 identification as Exhibit
 17 DEA-Prevoznik-16.)
 18 BY MR. STEPHENS:
 19 Q. Mr. Prevoznik, you're
 20 familiar with Exhibit Number 16, correct?
 21 A. Correct.
 22 Q. All right. I direct your
 23 attention, do you see on the first page
 24 where it says background?

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1 A. Yes.
 2 Q. I would direct you to the
 3 second paragraph. And the first sentence
 4 says, "The CSA was designed by Congress
 5 to combat diversion by providing for a
 6 closed system of drug distribution in
 7 which all legitimate handlers of
 8 controlled substances must obtain a DEA
 9 registration, and, as a condition of
 10 maintaining such registration, must take
 11 reasonable steps to ensure that the
 12 registration is not being utilized as a
 13 source of diversion."
 14 Do you see that?
 15 A. Yes.
 16 Q. Do you agree with that
 17 statement?
 18 A. Yes.
 19 Q. Okay. So the -- the
 20 direction -- the statement here is that
 21 distributors need to take reasonable
 22 steps, right?
 23 A. Yes.
 24 Q. The -- the letter does not

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1 Subject to that objection,
 2 you can answer.
 3 THE WITNESS: Could you
 4 please repeat it?
 5 BY MR. STEPHENS:
 6 Q. Sure. DEA would agree that
 7 a distributor was acting reasonably if it
 8 structured its business so it only
 9 distributed to retail chain pharmacies
 10 who were among the 99 -- 98 to
 11 99.9 percent of registrants who did not
 12 divert controlled substances?
 13 MR. FINKELSTEIN: Also
 14 foundation.
 15 You can answer.
 16 MR. FARRELL: Excuse me. I
 17 need -- I think I need to place an
 18 objection on the record.
 19 Objection. I think I need
 20 to say something on the record.
 21 Noting that you represent
 22 Walmart, I just want to make sure
 23 that we -- the questions that
 24 you're asking are tailored in

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1 state that registrants need to take every
 2 possible step, does it?
 3 A. No. It says reasonable.
 4 Q. Okay. Now, one key point of
 5 the Controlled Substances Act is that DEA
 6 wanted registrants to set up their supply
 7 chain so they did not supply controlled
 8 substances to customers who diverted
 9 them, right?
 10 A. Correct.
 11 Q. Okay. Would DEA agree that
 12 a distributor was acting reasonably if it
 13 structured its business so that it only
 14 distributed to retail chain pharmacies
 15 who were among the 98 to 99.9 percent of
 16 registrants who did not divert controlled
 17 substances?
 18 MR. FINKELSTEIN: Objection.
 19 Incomplete hypothetical, and I
 20 will instruct you not to answer to
 21 the extent that that answer
 22 requires information relating to
 23 ongoing enforcement actions or
 24 investigations.

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1 terms of Walmart's capacity as a
 2 distributor, instead of Walmart's
 3 capacity as a dispenser, because
 4 as you know, we've long had
 5 litigation quarrels on whether or
 6 not we can get into dispensing
 7 practices.
 8 So I just want to make sure
 9 the record is clear that the
 10 plaintiffs and the PEC are not
 11 waiving their right to one day
 12 open discussions on dispensing
 13 practices.
 14 MR. STEPHENS: Paul, if --
 15 if you look at my question, my
 16 question only talks about
 17 distribution.
 18 MR. FARRELL: Then you
 19 talked about the 99 percent of
 20 prescribers. So that's why I was
 21 concerned whether or not --
 22 MR. STEPHENS: It's -- it's
 23 simply distribution. That's all
 24 I'm asking. That's why the

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1 question has got two references to
 2 distribution, period.
 3 MR. FARRELL: Okay. Very
 4 good. Sorry.
 5 MR. FINKELSTEIN: Do you
 6 remember the question?
 7 THE WITNESS: One more time
 8 please.
 9 BY MR. STEPHENS:
 10 Q. DEA would agree that a
 11 distributor was acting reasonably if it
 12 structured its business so it only
 13 distributed to retail chain pharmacies
 14 who were among the 99.5 percent,
 15 98 percent of registrants who did not
 16 divert controlled substances?
 17 MR. FINKELSTEIN: The
 18 objections are foundation,
 19 incomplete hypothetical, and don't
 20 answer based on confidential law
 21 enforcement information.
 22 THE WITNESS: Okay. Again,
 23 I think this goes back to, you can
 24 have the best plans, but in terms

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1 MR. FINKELSTEIN: Incomplete
 2 hypothetical.
 3 MR. FARRELL: Again, my
 4 objection is you laid the
 5 foundation that the 1 or 2 percent
 6 included doctors trying to do the
 7 right thing. So I just want to
 8 make it clear that if we're
 9 getting into dispensing claims,
 10 that's a big issue for the
 11 plaintiffs.
 12 MR. STEPHENS: I'm not.
 13 THE WITNESS: I would just
 14 repeat that you can have the best
 15 strategy planned, but are you
 16 executing that plan.
 17 BY MR. STEPHENS:
 18 Q. Okay. All right. But if a
 19 distributor, just generally, a
 20 distributor -- if a distributor is not
 21 distributing prescription opioids to
 22 someone who is diverting them, is the
 23 distributor acting reasonably in the eyes
 24 of DEA?

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1 of execution and implementation of
 2 that plan, that business plan
 3 you're talking about, we did have
 4 a chain that it was specifically
 5 on their distribution center that
 6 did not report suspicious orders
 7 and that was part of a civil
 8 settlement of \$80 million.
 9 So that company thought they
 10 had a business strategy in place
 11 and they ended up with their
 12 distribution center in Florida not
 13 doing what they said they were
 14 going to do.
 15 BY MR. STEPHENS:
 16 Q. Okay. Let me re-ask it from
 17 a different angle.
 18 A. Sure.
 19 Q. Does DEA agree the
 20 distributor is acting reasonably if it
 21 structured its business model so it
 22 distributes to customers who are not
 23 among the 1 or 2 percent of people who
 24 divert prescription opioids?

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1 MR. FINKELSTEIN: Incomplete
 2 hypothetical. That was the third
 3 time you asked.
 4 You can answer a third time.
 5 THE WITNESS: The --
 6 their -- according to your --
 7 my -- what I understand you're
 8 asking is, it's a distributor, a
 9 company distributor is sending to
 10 their own pharmacies, correct?
 11 BY MR. STEPHENS:
 12 Q. No. I've changed that.
 13 A. Okay.
 14 Q. Okay. So my question is, if
 15 a distributor is not distributing
 16 prescription opioids to someone who is
 17 diverting them, is the distributor acting
 18 reasonably in the eyes of DEA?
 19 MR. FINKELSTEIN: Incomplete
 20 hypothetical. Asked and answered.
 21 THE WITNESS: This -- this
 22 isn't just, I mean, just opioids,
 23 you have responsibility for all
 24 controlled substances that are

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1 distributed. It's not just
 2 opioids. The responsibility is
 3 all controlled substances.
 4 BY MR. STEPHENS:
 5 Q. Okay. So let me re-ask the
 6 question. If a distributor is not
 7 distributing controlled substances to
 8 someone who is diverting them, is the
 9 distributor acting reasonably in the eyes
 10 of DEA?
 11 MR. FINKELSTEIN: Incomplete
 12 hypothetical. Asked and answered.
 13 Go ahead and answer again.
 14 THE WITNESS: So there's no
 15 controlled substances being
 16 distributed?
 17 BY MR. STEPHENS:
 18 Q. Let me re-ask the question.
 19 A. Sure.
 20 Q. If a distributor is not
 21 distributing controlled substances to
 22 someone who is diverting them, is the
 23 distributor acting reasonably in the eyes
 24 of DEA?

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1 registrants about a registrant's SOMs
 2 system, true?
 3 A. Yes. True.
 4 Q. DEA headquarters expects a
 5 registrant to listen to the information
 6 it receives from DEA field office
 7 personnel, true?
 8 MR. FINKELSTEIN: Vague.
 9 THE WITNESS: Yeah. It
 10 depends what they are asking,
 11 sure.
 12 BY MR. STEPHENS:
 13 Q. Okay. And the registrants
 14 who are visited by DEA field office
 15 personnel can rely on the information
 16 that they receive from DEA field division
 17 personnel regarding SOMs systems, true?
 18 MR. FINKELSTEIN: Vague.
 19 Incomplete hypothetical.
 20 THE WITNESS: Yeah, they get
 21 guidance.
 22 BY MR. STEPHENS:
 23 Q. Would you agree that it's
 24 important for DEA's diversion control

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1 MR. FINKELSTEIN: Incomplete
 2 hypothetical. Asked and answered.
 3 THE WITNESS: To -- give me
 4 the last part? Who is it going
 5 to?
 6 BY MR. STEPHENS:
 7 Q. If a distributor is not
 8 distributing controlled substances to
 9 someone who is diverting them and
 10 distributing to others, is the
 11 distributor acting reasonably in the eyes
 12 of DEA?
 13 MR. FINKELSTEIN: Same
 14 objections.
 15 THE WITNESS: Yes.
 16 BY MR. STEPHENS:
 17 Q. Okay. The diversion control
 18 group at DEA headquarters in Washington
 19 DC understand that DEA field division
 20 offices across the country will interest
 21 act with registrants, true?
 22 A. True.
 23 Q. And DEA personnel from DEA
 24 field offices will communicate with

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1 leadership at DEA headquarters in
 2 Washington DC to clearly communicate its
 3 interpretation of the requirements of the
 4 CSA and its regulations related to
 5 suspicious order monitoring to DEA's
 6 field offices?
 7 MR. FINKELSTEIN: Asked and
 8 answered. I'll note that every
 9 set of attorneys has asked a
 10 version of this question.
 11 But you can answer again.
 12 THE WITNESS: Yes.
 13 BY MR. STEPHENS:
 14 Q. Okay. You would agree that
 15 providing clear direction to DEA's field
 16 divisions one of the most important
 17 functions of the diversion control group
 18 leadership at headquarters?
 19 A. Yes.
 20 Q. If DEA headquarters does not
 21 clearly communicate its interpretation of
 22 the regulations and statutes related to
 23 the suspicious order monitoring programs
 24 to DEA's field offices, the field offices

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1 may give inaccurate information to
 2 registrants?
 3 MR. FINKELSTEIN: Vague.
 4 MS. SINGER: Objection.
 5 Calls for speculation.
 6 THE WITNESS: I don't -- I
 7 don't know specifically what every
 8 field office has provided that
 9 guidance and oftentimes when there
 10 is a question regarding that, we
 11 will -- the field is instructed to
 12 have the registrant reach out to
 13 headquarters for an official
 14 review.
 15 BY MR. STEPHENS:
 16 Q. Okay.
 17 A. So the official review would
 18 come from the headquarters side.
 19 Q. Okay. My question is a
 20 little bit -- I understand what you're
 21 saying. My question is just a little bit
 22 different.
 23 My question is, if the field
 24 office doesn't necessarily understand

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1 A. Yes. That sounds about
 2 right.
 3 Q. Okay. After Mr. Rannazzisi
 4 left DEA in 2015, DEA's leadership
 5 recognized that it needed to make some
 6 important changes to improve how DEA
 7 communicated with registrants, true?
 8 MR. FINKELSTEIN: Objection.
 9 Vague.
 10 MS. SINGER: Lack of
 11 foundation.
 12 THE WITNESS: I mean, yeah,
 13 yeah.
 14 BY MR. STEPHENS:
 15 Q. DEA's leadership after
 16 Mr. Rannazzisi left DEA in 2015 wanted to
 17 increase collaboration with registrants
 18 to decrease diversion, correct?
 19 A. Correct.
 20 Q. DEA's current leadership has
 21 acknowledged that it needs to do better
 22 in its efforts to collaborate with
 23 manufacturers, distributors, and retail
 24 chain pharmacies, true?

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1 headquarter's position on something
 2 related to the statute and the
 3 regulations, there's a risk that they
 4 could provide inaccurate information to
 5 registrants in the field?
 6 MS. SINGER: Objection.
 7 Calls for speculation.
 8 MR. FINKELSTEIN: I'll join.
 9 Add vague, incomplete
 10 hypothetical.
 11 THE WITNESS: I would -- if
 12 they don't know, and don't ask,
 13 then yes, hypothetically, yes.
 14 BY MR. STEPHENS:
 15 Q. All right. So let's now
 16 talk about communications between DEA and
 17 the registrants. All right?
 18 A. Yes.
 19 Q. Okay. Agree that at some
 20 point after -- well, let me strike that
 21 and start over.
 22 Mr. Rannazzisi ran the
 23 diversion control group from 2006 to
 24 about 2015, right?

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1 A. I believe we all need to do
 2 it.
 3 Q. Okay.
 4 A. Not just one. It's --
 5 everybody has to be involved.
 6 Q. My question is maybe a
 7 little bit different than your answer.
 8 So let me restate it.
 9 A. Sure.
 10 Q. DEA's current leadership has
 11 acknowledged that it needs to do better
 12 in its efforts to collaborate with
 13 manufacturers, distributors and retail
 14 chain pharmacies?
 15 A. Correct.
 16 MR. FINKELSTEIN: Just wait.
 17 (Document marked for
 18 identification as Exhibit
 19 DEA-Prevoznik-17.)
 20 BY MR. STEPHENS:
 21 Q. Mr. Prevoznik, I'm showing
 22 you what has been marked as Exhibit
 23 Number 17. It is more summit -- or
 24 congressional materials.

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1 This one is dated March 20,
 2 2018. It's a hearing in front of the
 3 subcommittee of oversight and
 4 investigations. The committee on energy
 5 and commerce entitled, "The Drug
 6 Enforcement Administration's Role in
 7 Combatting the Opioid Epidemic."
 8 Do you see that?
 9 A. Yes.
 10 Q. All right. I would direct
 11 you to Page 21.
 12 MR. FINKELSTEIN: Counsel,
 13 whose highlighting is this?
 14 MR. STEPHENS: We can get a
 15 clean version at a break. That
 16 highlighting would be -- it may be
 17 mine.
 18 MR. FINKELSTEIN: Okay.
 19 BY MR. STEPHENS:
 20 Q. On Page 21 do you see in
 21 bold in the middle of the page it talks
 22 about DEA's lessons learned and the
 23 response of the proliferation of CPDs?
 24 A. Yes.

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1 responsibilities with its registrants, it
 2 would help in the effort to reduce
 3 prescription drug abuse?
 4 MR. FINKELSTEIN: Vague.
 5 Incomplete hypothetical.
 6 THE WITNESS: That's the
 7 goal.
 8 BY MR. STEPHENS:
 9 Q. Okay. And would you agree
 10 that current leadership at DEA is now
 11 willing to collaborate with registrants
 12 who can help DEA reduce diversion?
 13 A. Yes.
 14 Q. Fair to say that DEA's
 15 current leadership understands that
 16 treating potential good faith
 17 collaborators as adversaries is not an
 18 effective way to reduce diversion?
 19 MR. FINKELSTEIN: Incomplete
 20 hypothetical.
 21 THE WITNESS: Correct.
 22 BY MR. STEPHENS:
 23 Q. All right. Mr. Prevoznik,
 24 I'd like to transition a little bit here

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1 Q. Okay. And if you look at
 2 the -- the first sentence there, it
 3 reads, "Due to the complexity of DEA's
 4 regulatory program, the diversion control
 5 division has worked aggressively to
 6 improve its communication and cooperation
 7 with its more than 1.7 million
 8 registrants who represent medical
 9 professionals, pharmaceutical drug
 10 manufacturers, and those in the drug
 11 chain" -- "drug supply chain."
 12 Do you see that?
 13 A. Yes.
 14 Q. Have I read that accurately?
 15 A. Yes.
 16 Q. Okay. And -- and this is a
 17 statement indicating that DEA's
 18 leadership in March 20th of 2018 was
 19 working aggressively to improve its
 20 communication and cooperation with
 21 registrants, right?
 22 A. Right.
 23 Q. Okay. DEA also recognizes
 24 that if it improves on its communication

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1 and ask you some questions about the
 2 internet distributor initiative,
 3 including why DEA gave those internet
 4 distributor initiative briefings, when
 5 the briefings occurred and who generally
 6 received them. Okay?
 7 A. Sure.
 8 Q. This is 30(b)(6) Topic 3.
 9 Okay?
 10 A. Yes.
 11 Q. All right. And -- and you
 12 testified about some of this yesterday.
 13 I'll try and go quickly through that.
 14 All right?
 15 A. Yes.
 16 Q. In 2006, DEA implemented the
 17 internet distributor initiative, right?
 18 MR. FINKELSTEIN: Asked and
 19 answered.
 20 THE WITNESS: 2005.
 21 BY MR. STEPHENS:
 22 Q. Okay. 2005, right. So DEA
 23 implements it in 2005, right?
 24 A. Correct.

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1 Q. Okay. And the -- the
 2 program is initially designed to educate
 3 wholesale distributors related to rogue
 4 internet pharmacies, and then downstream,
 5 a little bit later, it was to diverting
 6 rogue pain clinics, right?
 7 MR. FINKELSTEIN: Asked and
 8 answered.
 9 THE WITNESS: Correct.
 10 BY MR. STEPHENS:
 11 Q. Okay. All right. I was
 12 just trying to remind you from where we
 13 were yesterday.
 14 All right. My question is,
 15 did DEA ever have a retail chain pharmacy
 16 initiative?
 17 A. No.
 18 Q. Did DEA ever meet with CVS,
 19 Rite Aid, Walmart or Walgreens, HBC Giant
 20 Eagle, as part of DEA's internet
 21 distributor initiative?
 22 A. Not to my knowledge.
 23 Q. Okay. Now at the time, you
 24 know, taking you back to 2005, 2006, DEA

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1 opioids in the eyes of DEA. And others
 2 were not rogue and did not divert
 3 opioids, correct?
 4 MR. FINKELSTEIN: Calls for
 5 speculation.
 6 THE WITNESS: I am not aware
 7 of any pharmacies not on the --
 8 the latter part of your question.
 9 Because not all -- not all
 10 internet pharmacies were
 11 dispensing opioids, but they could
 12 be dispensing other controlled
 13 substances, and that would be
 14 diversion of those controlled
 15 substances.
 16 (Document marked for
 17 identification as Exhibit
 18 DEA-Prevoznik-18.)
 19 BY MR. STEPHENS:
 20 Q. Mr. Prevoznik, I've placed
 21 in front of you a transcript from the --
 22 a hearing before Congress dated May 16,
 23 2007. It's a hearing before the
 24 committee on the judiciary of the United

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1 believed that some of these internet
 2 pharmacies were rogue pharmacies, meaning
 3 that those pharmacies were diverting
 4 opioids?
 5 MR. FINKELSTEIN: Asked and
 6 answered.
 7 THE WITNESS: Correct.
 8 BY MR. STEPHENS:
 9 Q. Okay. The DEA also
 10 understood that not all pharmacies
 11 operating on the internet diverted
 12 controlled substances, true?
 13 A. Correct.
 14 Q. So some internet pharmacies
 15 were rogue and diverted opioids, and
 16 other internet pharmacies were not rogue
 17 and did not divert opioids, true?
 18 MS. SINGER: Objection.
 19 Scope.
 20 THE WITNESS: Could you
 21 repeat that?
 22 BY MR. STEPHENS:
 23 Q. Sure. Some internet
 24 pharmacies were rogue and diverted

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1 States Senate entitled, "Rogue Online
 2 Pharmacies: The Growing Problem of
 3 Internet Drug Trafficking."
 4 Do you see that?
 5 A. Yes.
 6 Q. Okay. If I could direct you
 7 to Page 52.
 8 If you look at the top of
 9 Page 52, Mr. Prevoznik, it's entitled,
 10 "Rogue Online Pharmacies: The Growing
 11 Problem of Internet Drug Trafficking,"
 12 dated May 16, 2007. Questions for the
 13 hearing record for Joseph Rannazzisi,
 14 deputy assistant administrator, office of
 15 diversion control, Drug Enforcement
 16 Administration, United States Department
 17 of Justice.
 18 Do you see that?
 19 A. Yes.
 20 Q. Okay. The very first
 21 question is from Chairman Leahy, do you
 22 see that?
 23 A. Yes.
 24 Q. And 1.a. asks:

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1 "Approximately how many websites
 2 currently offer to sell controlled
 3 substances illegally over the internet?"
 4 Do you see that?
 5 A. Yes.
 6 Q. Okay. Now, if you look down
 7 towards the -- the middle of the
 8 response, there's a state -- there's a
 9 sentence that starts it should be noted.
 10 Do you see that?
 11 A. Yes.
 12 Q. The statement reads: "It
 13 should be noted that there are legitimate
 14 pharmacies that provide controlled
 15 substances via the internet and operate
 16 daily within the boundaries of the law."
 17 Do you see that?
 18 A. Yes.
 19 Q. Do you agree with that?
 20 MR. FINKELSTEIN: Scope.
 21 Calls for speculation.
 22 THE WITNESS: Yeah, this is
 23 before the Ryan-Haight Act. So,
 24 yes.

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1 sure what you mean by the use of
 2 the word "blame."
 3 BY MR. STEPHENS:
 4 Q. Did DEA take any action,
 5 civil, regulatory, administrative,
 6 against legitimate internet pharmacies
 7 who DEA thought was acting within the
 8 boundaries of the law for the actions of
 9 the other internet pharmacies who DEA
 10 thought were rogue and were diverting
 11 controlled substances?
 12 MR. FINKELSTEIN: Vague.
 13 Incomplete hypothetical.
 14 THE WITNESS: I'm not aware
 15 of it.
 16 BY MR. STEPHENS:
 17 Q. Okay. So one aspect that
 18 DEA included in its internet distributor
 19 briefing related to the percentage of
 20 controlled versus noncontrolled
 21 substances that a particular pharmacy
 22 ordered, right?
 23 MR. FINKELSTEIN: Vague.
 24 THE WITNESS: Correct.

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1 BY MR. STEPHENS:
 2 Q. Okay. So my -- my point
 3 was, some internet pharmacies in the eyes
 4 of DEA were rogue and diverted opioids --
 5 or diverted controlled substances, fair?
 6 A. Fair.
 7 Q. All right. Other online
 8 internet pharmacies were not rogue
 9 pharmacies and operated within the
 10 boundaries of the law in the eyes of DEA
 11 as of May 16, 2007, based on what DEA
 12 told the Senate, right?
 13 A. Correct.
 14 Q. Okay. Now, did DEA blame
 15 the internet pharmacies who were acting
 16 within the boundaries of the law for the
 17 actions of the rogue internet pharmacies
 18 who DEA thought were diverting
 19 prescription opioids?
 20 MS. SINGER: Objection.
 21 Scope.
 22 MR. FINKELSTEIN: Vague.
 23 Incomplete hypothetical.
 24 THE WITNESS: Not really

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1 BY MR. STEPHENS:
 2 Q. Okay. And you testified
 3 about this a little bit yesterday, right?
 4 A. Yes.
 5 Q. Okay. All right. So I've
 6 got a few more questions related to that.
 7 I will try not to repeat the exact
 8 question.
 9 And one characteristic the
 10 DEA noticed about rogue internet
 11 pharmacies that were diverting controlled
 12 substances was an imbalance that they had
 13 between the ratio of controlled
 14 substances compared to non-controlled
 15 substances that they distributed, right?
 16 A. That would be one criteria.
 17 Yes.
 18 Q. And some of the rogue
 19 internet pharmacies that were diverting
 20 controlled substances had a ratio where
 21 they distributed 95 percent controlled
 22 substances against 5 percent
 23 non-controlled substances, right?
 24 A. Yes.

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1 Q. And DEA viewed a ratio of
 2 95 percent controlled substances versus 5
 3 percent non-controlled substances as a
 4 possible indication that the internet
 5 pharmacy was diverting the controlled
 6 substances true?
 7 A. I don't -- I don't think we
 8 locked in on those specific numbers. I
 9 mean, that was an example he gave of 95
 10 and five. But we were -- we were
 11 comparing against a brick-and-mortar
 12 store of what typically happens there.
 13 Q. Yeah. Okay. So -- and a
 14 brick-and-mortar store would be like a
 15 Walmart or CVS, a Rite Aid, HBC Giant
 16 Eagle, CVS, right?
 17 A. As well as independent
 18 pharmacies as well, yes.
 19 Q. Okay. And Walmart
 20 pharmacies never had a ratio of
 21 controlled to noncontrolled substances
 22 that approached anything like the 95
 23 percent to 5 percent ratio that the DEA
 24 saw at some rogue internet pharmacies,

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1 acknowledged in presentations that it
 2 gave that no chain pharmacies were rogue
 3 pharmacies, right?
 4 A. Correct.
 5 MR. FINKELSTEIN: Hang on
 6 one second. I am just reading the
 7 question.
 8 Okay.
 9 BY MR. STEPHENS:
 10 Q. Your answer was "correct,"
 11 right?
 12 A. Yes.
 13 Q. Walmart, CVS, Rite Aid,
 14 Walgreens, HBC Giant Eagle are all chain
 15 pharmacies, true?
 16 A. True.
 17 Q. DEA is generally aware that
 18 Walmart only distributes controlled
 19 substances to its own Walmart store
 20 pharmacies, right?
 21 MR. FINKELSTEIN: Objection.
 22 Scope. Calls for speculation.
 23 THE WITNESS: Well, that
 24 just changed. But prior to the

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1 right?
 2 MR. FINKELSTEIN: Wait.
 3 Scope, calls for speculation.
 4 THE WITNESS: Not to my
 5 knowledge.
 6 BY MR. STEPHENS:
 7 Q. Okay. CVS, Walgreens, Rite
 8 Aid, HBC Giant Eagle, they never had a
 9 ratio of controlled to noncontrolled
 10 substances that was 95 percent controlled
 11 to 5 percent non-controlled, right?
 12 MR. FINKELSTEIN: Scope.
 13 Calls for speculation.
 14 THE WITNESS: Not to my
 15 knowledge.
 16 MR. FINKELSTEIN:
 17 Mr. Videographer, what's our
 18 on-the-record time?
 19 THE VIDEOGRAPHER:
 20 42 minutes.
 21 MR. FINKELSTEIN: We're past
 22 seven hours. So everybody knows.
 23 BY MR. STEPHENS:
 24 Q. DEA has acknowledged and has

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1 change, yes.
 2 BY MR. STEPHENS:
 3 Q. Okay. And the change now is
 4 that they don't distribute at all, right?
 5 A. Correct.
 6 Q. Okay. Walmart did not
 7 distribute controlled substances to
 8 internet pharmacies, right?
 9 MR. FINKELSTEIN: Scope.
 10 Calls for speculation.
 11 THE WITNESS: I don't know.
 12 I can't answer that, because I
 13 don't know if there were any sales
 14 store -- from the store to one of
 15 those -- one of those potentially
 16 rogue pharmacies.
 17 BY MR. STEPHENS:
 18 Q. I'm only talking about --
 19 MR. FINKELSTEIN: Let him
 20 finish his answer.
 21 MR. STEPHENS: I've let him
 22 finish his answer.
 23 MR. FINKELSTEIN: No, you
 24 haven't let him finish his answer.

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1 MR. STEPHENS: All morning
 2 long.
 3 BY MR. STEPHENS:
 4 Q. Mr. Prevoznik, have I been
 5 interrupting you this morning?
 6 A. I'm fine.
 7 Q. Okay. Thank you.
 8 CVS did not distribute
 9 controlled substances to rogue internet
 10 pharmacies, correct?
 11 MR. FINKELSTEIN: Vague.
 12 THE WITNESS: Again, I don't
 13 know if there were transactions
 14 between the -- a pharmacy to
 15 pharmacy.
 16 BY MR. STEPHENS:
 17 Q. I'm talking about
 18 distribution.
 19 MR. FINKELSTEIN: Scope.
 20 Incomplete hypothetical. Vague.
 21 THE WITNESS: Well, now that
 22 you've added distribution in that,
 23 then no, not to my knowledge.
 24 BY MR. STEPHENS:

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1 Q. And Rite Aid didn't
 2 distribute controlled substances to
 3 internet pharmacies, right?
 4 MR. FINKELSTEIN: Scope.
 5 I instruct you not to
 6 answer.
 7 MR. STEPHENS: What's the
 8 basis for that?
 9 MR. FINKELSTEIN: It's
 10 outside the scope. You've spent
 11 more than seven hours with this
 12 witness. Ask questions within the
 13 scope of the deposition that is.
 14 MS. MAINIGI:
 15 Mr. Finkelstein, if I may just
 16 note on the record. I don't know
 17 what relevance seven hours has and
 18 why you continue to reference
 19 seven hours to this particular
 20 deposition. The manner in which
 21 the time is calculated, as you
 22 know, was per Judge Cohen --
 23 Special Master Cohen's order.
 24 The seven hours is

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1 Q. My question, Mr. Prevoznik,
 2 just to reconfirm, all deal with
 3 distribution here.
 4 A. Okay.
 5 Q. Okay. So I'll re-ask it. I
 6 think we got an answer. But let me
 7 re-ask it so the record is clear.
 8 CVS did not distribute
 9 controlled substances to rogue internet
 10 pharmacies right?
 11 A. Not --
 12 MS. SINGER: Objection
 13 scope.
 14 MR. FINKELSTEIN: Wait, Tom.
 15 Scope. Incomplete
 16 hypothetical. Vague. We're past
 17 seven hours, and you're still
 18 outside the scope. I'm going to
 19 start instructing him not to
 20 answer.
 21 You can answer this time.
 22 THE WITNESS: Not to my
 23 knowledge.
 24 BY MR. STEPHENS:

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1 irrelevant. I think it would
 2 certainly be relevant in that we
 3 wouldn't want to burden the
 4 witness by going longer than seven
 5 hours, perhaps, in the course of
 6 one particular day. But I don't
 7 think there's any need, the
 8 morning of the deposition, to keep
 9 referencing seven hours.
 10 MR. FINKELSTEIN: You've
 11 noted your position that the seven
 12 hours is irrelevant. My
 13 instruction stands. And we can
 14 revisit this with the special
 15 master.
 16 MS. MAINIGI: If there's
 17 something to revisit, we're happy
 18 to do that. I don't see anything
 19 to revisit.
 20 MR. FINKELSTEIN: Good. I
 21 agree.
 22 THE REPORTER: You have to
 23 speak up. There's no mic.
 24 MR. KOBRIN: Sorry. I'm

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1 Josh Kobrin for HBC. Mr. Stephens
 2 is representing all of the chain
 3 pharmacies. And to cut him off
 4 when he's trying to ask questions
 5 on behalf of all those chain
 6 pharmacies when he's in the middle
 7 of a question that is clearly not
 8 a hypothetical. On the basis that
 9 it's a hypothetical, is totally
 10 improper.
 11 MR. FINKELSTEIN: Your
 12 objection is noted.
 13 MR. STEPHENS: I would also
 14 note that the answers that the
 15 witness started with this morning
 16 about diversion, where to -- who
 17 diverts is relevant to the
 18 adequacy of a SOMs program, and
 19 where diversion occurs being
 20 relevant to the adequacy of a SOMs
 21 program, and to -- to assess a
 22 suspicious order, where the
 23 shipment goes and it's distributed
 24 to is relevant, puts me well

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1 you not to answer.
 2 THE WITNESS: Correct.
 3 MR. FINKELSTEIN: Tom. Tom.
 4 BY MR. STEPHENS:
 5 Q. Walmart -- Walgreens did not
 6 distribute controlled substances to
 7 internet pharmacies, correct?
 8 MR. FINKELSTEIN: Instruct
 9 you not to answer.
 10 THE WITNESS: Taking the
 11 advice of my attorney.
 12 BY MR. STEPHENS:
 13 Q. HBC Giant Eagle did not
 14 distribute controlled substances to
 15 internet pharmacies, correct?
 16 MR. FINKELSTEIN: Instruct
 17 you not to answer.
 18 THE WITNESS: Following my
 19 attorney's instructions.
 20 BY MR. STEPHENS:
 21 Q. Okay. Mr. Prevoznik,
 22 after -- you mentioned the Ryan-Haight
 23 Act in 2008, right?
 24 A. Correct.

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1 within Topic Number 2 and Topic
 2 Number 3, that deal with DEA's
 3 interpretation and enforcement of
 4 the Controlled Substances Act, its
 5 regulations, what is suspicious,
 6 know your customer, and DEA's
 7 guidance on the adequacy of a SOMs
 8 program.
 9 MR. FINKELSTEIN: Let -- let
 10 me answer. You are asking him
 11 what a specific retail chain
 12 pharmacy actually does in
 13 operation. That's outside the
 14 scope, and I've instructed him not
 15 to answer that question.
 16 You can ask your next
 17 question.
 18 MR. STEPHENS: Who they
 19 distribute to.
 20 BY MR. STEPHENS:
 21 Q. Rite Aid did not distribute
 22 controlled substances to internet
 23 pharmacies, correct?
 24 MR. FINKELSTEIN: Instruct

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1 Q. Okay. The Ryan-Haight Act
 2 in 2008 dealt with a legislative attempt
 3 to try and deal with the problem that DEA
 4 was seeing with rogue internet
 5 pharmacies, fair?
 6 MS. SINGER: Objection.
 7 Scope.
 8 THE WITNESS: Correct.
 9 BY MR. STEPHENS:
 10 Q. Okay. So I'm again going to
 11 ask you some questions about where DEA
 12 saw diversion occurring, okay?
 13 A. Yes.
 14 Q. Okay. Now, the -- after the
 15 Ryan-Haight Act, DEA took some
 16 enforcement actions against rogue
 17 internet pharmacies, right?
 18 A. Yes. As -- as well as some
 19 distributors.
 20 Q. Okay. And -- and after
 21 that, in the 2008-2009 time period, DEA
 22 began to see issues with rogue pain
 23 clinics, right?
 24 MR. FINKELSTEIN: Asked and

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1 answered.
 2 THE WITNESS: Correct.
 3 MR. STEPHENS: I'm just
 4 trying to set the time frame for
 5 the witness.
 6 BY MR. STEPHENS:
 7 Q. Do you understand what I'm
 8 saying, Mr. Prevoznik?
 9 A. Yes.
 10 Q. Okay. All right. So it was
 11 in the -- in -- approximate time frames
 12 here, and clarify to whatever degree you
 13 feel you need to, Mr. Prevoznik. But
 14 roughly in 2009, 2010, and shortly after
 15 that, the DEA started to have more issues
 16 with rogue pain clinics, right?
 17 A. Correct.
 18 Q. Okay. Did DEA ever conduct
 19 a distributor briefing with retail chain
 20 pharmacies related to rogue pain clinics?
 21 MR. FINKELSTEIN: Asked and
 22 answered.
 23 THE WITNESS: Correct.
 24 BY MR. STEPHENS:

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1 by the rogue pain clinics?
 2 MR. FINKELSTEIN: Objection.
 3 Vague.
 4 THE WITNESS: Not that I'm
 5 aware of.
 6 BY MR. STEPHENS:
 7 Q. Okay. And like the rogue
 8 internet pharmacies that preceded them,
 9 these rogue pain clinics that were
 10 diverting controlled substances typically
 11 distributed a lopsided ratio of
 12 controlled substances to noncontrolled
 13 substances?
 14 MS. SINGER: Objection.
 15 Scope.
 16 THE WITNESS: To my -- yes.
 17 BY MR. STEPHENS:
 18 Q. Okay. The -- rogue pain
 19 clinics were not full service pharmacies
 20 like a retail chain pharmacy like Walmart
 21 or CVS, Rite Aid or Walgreens, right?
 22 MR. FINKELSTEIN: Calls for
 23 speculation. Foundation.
 24 THE WITNESS: I'm not sure

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1 Q. Okay. So now like rogue --
 2 or I'm sorry, strike that. Let me re-ask
 3 the question.
 4 Like internet pharmacies,
 5 DEA -- DEA would agree that not all pain
 6 clinics diverted controlled substances?
 7 MR. FINKELSTEIN: Calls for
 8 speculation. Asked and answered.
 9 THE WITNESS: Correct.
 10 BY MR. STEPHENS:
 11 Q. Okay. There was some good
 12 pain clinics who operated within the
 13 boundaries of the law and there were some
 14 rogue pain clinics that operated outside
 15 the boundaries of the law.
 16 Is that fair?
 17 MS. SINGER: Same objections
 18 as to scope of the questioning
 19 here.
 20 THE WITNESS: Yes.
 21 BY MR. STEPHENS:
 22 Q. Okay. Did DEA file any
 23 lawsuits against the good pain clinics to
 24 try and make them pay for the harm caused

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1 what you mean by --
 2 MS. SINGER: Objection as to
 3 scope.
 4 BY MR. STEPHENS:
 5 Q. All right. So rogue pain
 6 clinics didn't sell cornflakes, greeting
 7 cards, Oreo cookies, that type thing,
 8 right?
 9 MR. FINKELSTEIN: Calls for
 10 speculation.
 11 MS. SINGER: Objection.
 12 Scope.
 13 THE WITNESS: Correct.
 14 BY MR. STEPHENS:
 15 Q. Okay. But retail chain
 16 pharmacies do sell a full service of
 17 other things to their customers, right?
 18 MR. FINKELSTEIN: Calls for
 19 speculation.
 20 THE WITNESS: Yes.
 21 BY MR. STEPHENS:
 22 Q. Mr. Prevoznik, if I could
 23 I'd like to transition to Topic Number 9
 24 which -- of your 30(b)(6), which relates

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1 to ARCOS. Okay?

2 A. Yes.

3 Q. And I'd like to ask you a

4 few questions about why DEA processes and

5 analyzes ARCOS data to identify and stop

6 sources of diversion.

7 Okay?

8 A. Yes.

9 Q. Okay. So -- and you've

10 answered some questions about ARCOS

11 yesterday, right?

12 A. Yes.

13 Q. Okay. So I'll try not to

14 re-ask those. I'll do the best I can.

15 I'll -- I may have to touch on some of

16 them just to set where I'm going with the

17 other questions that I want to ask.

18 All right?

19 A. Yes.

20 Q. Okay. So yesterday you

21 mentioned that the ARCOS database has the

22 ability to generate investigative leads

23 that DEA could pursue proactively to

24 discover the identity of individuals

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1 BY MR. STEPHENS:

2 Q. And more proactive

3 investigations of potential diverters

4 should result in more actions filed

5 against suspected diverters?

6 MR. FINKELSTEIN: Incomplete

7 hypothetical.

8 THE WITNESS: What kind of

9 actions?

10 BY MR. STEPHENS:

11 Q. Any. Admin, civil,

12 criminal.

13 MR. FINKELSTEIN: Same --

14 BY MR. STEPHENS:

15 Q. Basically, the more leads

16 you have, the more cases you can make,

17 right?

18 MR. FINKELSTEIN: Same

19 objection.

20 THE WITNESS: Yes.

21 BY MR. STEPHENS:

22 Q. More leads is a good thing

23 for an investigator, right?

24 MR. FINKELSTEIN: Same

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1 responsible for diverting opioids, true?

2 MR. FINKELSTEIN: Letting

3 this go for now. You can answer.

4 THE WITNESS: Yes.

5 BY MR. STEPHENS:

6 Q. And those ARCOS leads could

7 be helpful to DEA's efforts in the field,

8 right?

9 A. Yes.

10 Q. And that would support DEA's

11 mission to prevent diversion where it's

12 occurring, right?

13 A. It points to it. It might

14 not just be that source. There's going

15 to be other issues as well, so...

16 Q. Would you agree with a

17 general principle that more investigative

18 leads generated by ARCOS would equate to

19 more proactive investigations of

20 potential diverters?

21 MR. FINKELSTEIN: Incomplete

22 hypothetical.

23 THE WITNESS: Yeah. It's a

24 point.

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1 objection.

2 THE WITNESS: Yes.

3 BY MR. STEPHENS:

4 Q. All right. So let me ask

5 you a few questions about DEA's procedure

6 regarding who at DEA processes the ARCOS

7 data to generate the leads to identify

8 and stop diversion, okay?

9 A. Yes.

10 Q. Topic 9 in your 30(b)(6)

11 designation.

12 Yesterday you testified

13 that, as I understand it, there are

14 currently ten employees who work on the

15 ARCOS unit that analyzes the data; is

16 that right?

17 A. Yeah. Yes, they analyze the

18 data.

19 Q. Four input, and six output,

20 right?

21 A. Yes.

22 Q. Okay. The six output, would

23 those be the DEA employees who analyze

24 the data to put out to the field

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1 proactive investigative leads that the
 2 field can use? Am I understanding that?
 3 A. Actually, the field has
 4 access to it as well. So the field can
 5 generate their own leads off it. So
 6 our -- the group at headquarters assists
 7 with -- assists -- often assists with
 8 case investigations as well. So the
 9 leads could come from either the field
 10 themselves, the field investigators
 11 themselves, or they may come from our
 12 group at headquarters.
 13 So it's a combination of
 14 either source that would -- that could
 15 potentiate those leads. So I know it's
 16 not one particular group that does it.
 17 There's various people doing it all
 18 across the field.
 19 Q. All right. Are you done?
 20 A. Mm-hmm.
 21 Q. Okay. I just wanted to make
 22 sure I didn't interrupt you.
 23 And my question may be more
 24 artfully framed. Can you describe for me

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1 data that comes from the registrants, and
 2 then it -- through case support with the
 3 field and with investigations, they do
 4 the online statistical reports that we
 5 upload. They respond to FOIAs. They
 6 respond to doing -- for presentations.
 7 They also do assessments,
 8 trends assessments. They also do threat
 9 assessments for the field. So that's
 10 part of our -- building our scheduled
 11 work plan. So it's a variety of
 12 different things that that group does.
 13 Q. Okay. That's helpful.
 14 Thank you.
 15 So there are ten people
 16 there currently, right?
 17 MR. FINKELSTEIN: Asked and
 18 answered.
 19 THE WITNESS: Yes.
 20 BY MR. STEPHENS:
 21 Q. Okay. And you supervised
 22 this group for a while? Did you
 23 supervise these ten employees for a
 24 while?

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1 the difference between the duties that
 2 the four input analysts have at DEA
 3 headquarters and compare that against the
 4 duties that the six output employees have
 5 at headquarters?
 6 A. Sure. So the input duties
 7 are -- that's the uploaded, as the
 8 registrants upload their data. They --
 9 that's what the input side does. They
 10 deal with the -- to ensure that the data
 11 is going in correctly, that errors are
 12 being fixed. There's constant
 13 communication with the registrants on,
 14 you know, you have to fix these errors.
 15 Is this what you meant? If they see
 16 anomalies, they will call the registrant,
 17 say, you know, your decimal point looks
 18 like it may be off. Could you look at
 19 your data?
 20 And so there's that constant
 21 communication to try to verify that what
 22 they're reporting is true and accurate.
 23 So that's the input side.
 24 The output side takes that

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1 A. I was never their direct
 2 supervisor. I'm a step higher.
 3 Q. Okay. No, I understand that
 4 you're senior in the org chart. I'm just
 5 trying to make sure that I understand at
 6 some point these ten people were in your
 7 reporting chain of command.
 8 A. Yes, that's correct.
 9 Q. Okay. They are not
 10 currently?
 11 A. Correct.
 12 Q. Okay. All right. Has the
 13 number -- and what's this -- what's this
 14 unit called, this ARCOS unit, what does
 15 DEA call it?
 16 A. ARCOS unit or targeting and
 17 analysis.
 18 Q. Okay. So if I call it the
 19 ARCOS unit you understand what I'm
 20 talking about?
 21 A. Correct.
 22 Q. Okay. All right. It
 23 currently has ten employees. How many
 24 employees did the -- this ARCOS unit have

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1 in, say, 2015?
 2 A. I'd speculate, because I
 3 wasn't up there at that point. But
 4 probably about ten.
 5 Q. Okay. Can you identify any
 6 period during your time at DEA where it
 7 had more -- that the ARCOS unit had more
 8 than ten employees on it?
 9 A. Oh, I'm sorry. What I meant
 10 by ten, you had ten in the output side
 11 and you had about three on the input
 12 side. So it was a slight increase. I
 13 know -- I believe we're three under right
 14 now on our organizational chart.
 15 Q. So -- and you've been in DEA
 16 for -- since '91?
 17 A. Yeah.
 18 Q. Okay. And just -- can you
 19 identify any period of time between 2006
 20 and 2015 where this ARCOS unit had more
 21 than ten people working on it?
 22 MR. FINKELSTEIN: Asked and
 23 answered.
 24 THE WITNESS: I don't know.

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1 come in. It's usually we are working
 2 together through it --
 3 Q. Okay.
 4 A. -- as --
 5 Q. Describe for me the
 6 difference --
 7 MR. FINKELSTEIN: Wait. Let
 8 him finish his answer.
 9 BY MR. STEPHENS:
 10 Q. Mr. Prevoznik, was I
 11 interrupting you?
 12 MR. FINKELSTEIN: You just
 13 did interrupt him.
 14 BY MR. STEPHENS:
 15 Q. I'm sorry. Did you feel
 16 that I was interrupting you?
 17 A. I'm fine.
 18 Q. Okay. Thank you.
 19 MR. FINKELSTEIN: The record
 20 is going to reflect that he didn't
 21 finish his answer. And I'm asking
 22 counsel please let him finish his
 23 answer.
 24 BY MR. STEPHENS:

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1 I don't know.
 2 BY MR. STEPHENS:
 3 Q. Okay. So DEA currently uses
 4 ARCOS data in a proactive way to identify
 5 targets to investigate for diverting
 6 prescription opioids, right?
 7 A. Correct.
 8 Q. And in DEA terms, a
 9 proactive investigation is where DEA
 10 would identify a target and build a
 11 forward-looking case using investigative
 12 tools at DEA's disposal, right?
 13 MR. FINKELSTEIN: Vague.
 14 THE WITNESS: Yes.
 15 BY MR. STEPHENS:
 16 Q. Okay. And in contrast, a
 17 reactive case is a situation where a
 18 diversion investigator may have already
 19 built a case and then, you know looks to
 20 ARCOS for some information to confirm its
 21 case against someone that's already been
 22 built out, right?
 23 A. I wouldn't say that it's all
 24 the way to, like, the conclusion where we

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1 Q. Mr. Prevoznik, I'll work
 2 with you all day long to let you finish
 3 your answers. If you don't think I am, I
 4 apologize. All right?
 5 A. I'm good.
 6 Q. Okay. Thank you. All
 7 right. I'm just trying to understand in
 8 DEA land what the difference is between
 9 proactive and reactive, right.
 10 So how would you describe
 11 and define what reactive means?
 12 A. Well, to me reactive would
 13 be the field generated. So they are
 14 turning to the ARCOS unit to say hey, I'm
 15 either at the beginning part, middle
 16 part, or I need charts. The U.S.
 17 attorneys asked me to get charts on this.
 18 So that would be reactive.
 19 Proactive would be something
 20 that that group puts out.
 21 Q. Right. I got it.
 22 One is an existing
 23 investigation. They are just trying to
 24 confirm something through the use of

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1 ARCOS. And another one would be a
 2 proactive lead generated from
 3 headquarters to try and build a case,
 4 right? Like a threat assessment.
 5 A. Correct.
 6 Q. A threat assessment would be
 7 a proactive use of ARCOS, right?
 8 MR. FINKELSTEIN: Objection.
 9 Vague.
 10 THE WITNESS: Yes.
 11 BY MR. STEPHENS:
 12 Q. And in your view, producing
 13 threat assessments to the field is a good
 14 thing?
 15 MR. FINKELSTEIN: Objection.
 16 Vague.
 17 THE WITNESS: Yes.
 18 BY MR. STEPHENS:
 19 Q. Between 2006 and 2015, under
 20 the leadership of Joe Rannazzisi, ARCOS
 21 analysts did not provide quarterly threat
 22 assessments to the 22 field divisions at
 23 DEA, right?
 24 MR. FINKELSTEIN: Vague.

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1 time to take a break, or soon?
 2 BY MR. STEPHENS:
 3 Q. You okay? I've got -- I've
 4 got a little bit more on these topics.
 5 A. About five minutes?
 6 About five minutes?
 7 Q. Okay. Yeah, just let me
 8 know.
 9 A. I just need a break.
 10 Q. Okay.
 11 All right. So I've got some
 12 additional questions that will focus on
 13 the 2006 to 2015 time period. Okay? As
 14 it relates to ARCOS.
 15 A. Yes.
 16 Q. Fair to say that DEA's
 17 current leadership has improved how DEA
 18 uses ARCOS data in its diversion
 19 investigations after Mr. Rannazzisi
 20 retired in 2015?
 21 MR. FINKELSTEIN: Vague.
 22 THE WITNESS: I'm not sure
 23 what you mean by improvements.
 24 BY MR. STEPHENS:

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1 You can answer.
 2 THE WITNESS: Well, again,
 3 we -- in 2010 when we all went off
 4 the mainframe, the field had -- I
 5 mean, we always had access to
 6 ARCOS, so you did have the field
 7 generating their own leads. So
 8 they -- that -- that's what they
 9 would do. They would use that
 10 data for that.
 11 BY MR. STEPHENS:
 12 Q. Okay. All right. My
 13 question is a little bit different. I
 14 understand your response. My question is
 15 a little bit different.
 16 Between 2006 and 2015 under
 17 the leadership of Joe Rannazzisi, the
 18 ARCOS group at DEA headquarters did not
 19 provide quarterly threat assessments to
 20 the field divisions at DEA, true?
 21 MR. FINKELSTEIN: Vague.
 22 THE WITNESS: To my
 23 knowledge, you're right.
 24 MS. SINGER: Is this a good

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1 Q. Well, like using threat
 2 assessments and sending those to the
 3 field. You view those as a good thing,
 4 right?
 5 THE WITNESS: Yes.
 6 MR. FINKELSTEIN: Objection.
 7 Vague.
 8 BY MR. STEPHENS:
 9 Q. And that happened after
 10 Mr. Rannazzisi left in 2015, right?
 11 A. Yes.
 12 Q. And the purpose of putting
 13 those threat assessments out to the field
 14 division is the hope that they will
 15 reduce diversion, right?
 16 MR. FINKELSTEIN: Vague.
 17 THE WITNESS: Yes. But I do
 18 want to emphasize that ARCOS is
 19 not the only system that we use to
 20 send -- that's analyzed to send
 21 field -- leads out to the field.
 22 I mean there's other databases
 23 that we use and we work with other
 24 federal agencies and share data.

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1 So ARCOS is just a -- one part of
 2 a vast array of analysis that's
 3 used.
 4 BY MR. STEPHENS:
 5 Q. Okay. Between 2006 and 2015
 6 under Mr. Rannazzisi's leadership, did
 7 DEA have any published policy about what
 8 happens after an ARCOS lead is generated?
 9 A. Not to my knowledge.
 10 Q. Between 2006 and 2015, under
 11 Mr. Rannazzisi's leadership, did DEA have
 12 any process where it maintained any
 13 report indicating how many ARCOS leads
 14 were sent to DEA field investigations for
 15 investigation?
 16 MR. FINKELSTEIN: Vague.
 17 THE WITNESS: Not to my
 18 knowledge.
 19 BY MR. STEPHENS:
 20 Q. Between 2006 and 2015, under
 21 Mr. Rannazzisi's leadership, did DEA have
 22 any process where it maintained any
 23 report indicating how many ARCOS leads
 24 were actually investigated at the field

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1 suspension orders DEA obtained based on
 2 ARCOS leads?
 3 A. Not to my knowledge.
 4 Q. Between 2006 and 2015 under
 5 Mr. Rannazzisi's leadership, did DEA have
 6 any process where it maintained any
 7 report indicating how many orders to show
 8 cause DEA generated based on ARCOS leads?
 9 A. Not to my knowledge.
 10 Q. Between 2006 and 2015 under
 11 Mr. Rannazzisi's leadership, did DEA have
 12 any process where it maintained any
 13 report indicating how many convictions
 14 DEA obtained of diverters based on ARCOS
 15 leads?
 16 MR. FINKELSTEIN: Vague.
 17 THE WITNESS: Not to my
 18 knowledge.
 19 BY MR. STEPHENS:
 20 Q. Between 2006 and 2015 under
 21 Mr. Rannazzisi's leadership, did DEA have
 22 any process where it maintained any
 23 report indicating how many indictments
 24 DEA returned following ARCOS leads that

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1 division level?
 2 A. Not to my knowledge.
 3 Q. Between 2006 and 2015 under
 4 Mr. Rannazzisi's leadership, did DEA have
 5 any process where it maintained any
 6 report indicating how many ARCOS leads
 7 were referred out but not by DEA
 8 headquarters, but not investigated at the
 9 field division level?
 10 A. Not to my knowledge.
 11 Q. Between 2006 and 2015 under
 12 Mr. Rannazzisi's leadership, did DEA have
 13 any process where it maintained any
 14 report indicating how many ARCOS leads
 15 resulted in formal actions by DEA against
 16 suspected diverters?
 17 MR. FINKELSTEIN: Vague.
 18 THE WITNESS: Not to my
 19 knowledge.
 20 BY MR. STEPHENS:
 21 Q. Between 2006 and 2015 under
 22 Mr. Rannazzisi's leadership, did DEA have
 23 any process where it maintained any
 24 report indicating how many immediate

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1 had been generated?
 2 MR. FINKELSTEIN: Vague.
 3 THE WITNESS: Not to my
 4 knowledge.
 5 MR. FINKELSTEIN: Seems like
 6 we are at a pause. Can we take a
 7 break?
 8 MR. STEPHENS: Sure.
 9 THE VIDEOGRAPHER: 9:27. We
 10 are off the video record.
 11 (Short break.)
 12 THE VIDEOGRAPHER: 9:48. We
 13 are on the video record.
 14 BY MR. STEPHENS:
 15 Q. Mr. Prevoznik, let me ask
 16 you a couple quick questions and then
 17 I'll get back into ARCOS.
 18 Okay?
 19 A. Sure.
 20 Q. You had mentioned at the
 21 start today that you had looked at DEA's
 22 website and figured out a couple
 23 conferences. You gave us that
 24 information, right?

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1 A. Yes.
 2 Q. Okay. As to the 2007
 3 conference in Houston, you were not
 4 physically present at that conference,
 5 right?
 6 A. Correct.
 7 Q. You did not attend, correct?
 8 A. Correct.
 9 Q. Okay. All right.
 10 Now, one other question.
 11 Does a nonregistrant have an obligation
 12 to maintain effective controls to prevent
 13 diversion?
 14 MR. FINKELSTEIN: Vague.
 15 THE WITNESS: A
 16 nonregistrant?
 17 BY MR. STEPHENS:
 18 Q. Right.
 19 A. They're not within the
 20 closed system of distribution.
 21 Q. Okay. So they have no duty
 22 to maintain effective controls to prevent
 23 diversion, correct?
 24 MR. FINKELSTEIN: Vague.

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1 explain that?
 2 BY MR. STEPHENS:
 3 Q. Sure. Pattern evaluation
 4 test is a qualitative measure by which
 5 you look at a computer program and try
 6 and determine whether what the output is,
 7 is of high quality or suboptimal quality.
 8 Was DEA doing anything along those lines
 9 between 2006 and 2015 as it related to
 10 ARCOS data?
 11 MR. FINKELSTEIN: Vague.
 12 THE WITNESS: I don't know.
 13 BY MR. STEPHENS:
 14 Q. Between 2006 and 2015 under
 15 Mr. Rannazzisi's leadership, did DEA have
 16 any procedure that required DEA special
 17 agent in charges in the various field
 18 divisions to report back to DEA
 19 headquarters to give process reports
 20 about what the field division had done to
 21 investigate ARCOS leads?
 22 A. Not to my knowledge.
 23 Q. Okay. And just for
 24 definitional purposes, each DEA field

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1 THE WITNESS: Correct.
 2 BY MR. STEPHENS:
 3 Q. All right. Turning back to
 4 ARCOS. Between 2006 and 2015, did DEA
 5 maintain any report that would show how
 6 many ARCOS leads got sent to DEA offices
 7 in Ohio in any particular year?
 8 MR. FINKELSTEIN: Scope.
 9 THE WITNESS: Not to my
 10 knowledge during that particular
 11 period, and we don't do it today,
 12 so...
 13 BY MR. STEPHENS:
 14 Q. Okay. Between 2006 and
 15 2015, did DEA have any process that
 16 required the ARCOS team to run pattern
 17 evaluation tests to verify whether ARCOS
 18 was generating high quality investigative
 19 leads as opposed to suboptimal
 20 investigative leads?
 21 MR. FINKELSTEIN: Vague.
 22 MS. SINGER: Objection.
 23 Foundation.
 24 THE WITNESS: Could you

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1 position has a number one agent that runs
 2 that field division. That agent's title
 3 is a special agent in charge, the SAC,
 4 right?
 5 A. Correct.
 6 Q. SAC. Correct. Was there
 7 any policy at DEA between 2006 and 2015
 8 that would have prevented the deputy
 9 administrator in charge of diversion
 10 control from instituting that procedure?
 11 A. Not to my knowledge.
 12 Q. Between 2006 and 2015, did
 13 DEA have any procedure that prevented a
 14 field -- that prevents a field division
 15 from simply ignoring ARCOS information
 16 sent to them by DEA headquarters?
 17 A. Not to my knowledge.
 18 Q. Was there anything
 19 preventing the deputy administrator in
 20 charge of diversion control,
 21 Mr. Rannazzisi, from instituting a
 22 process to ensure that DEA's field
 23 divisions would not ignore ARCOS leads in
 24 their work?

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1 MS. SINGER: Objection.
 2 Foundation.
 3 MR. FINKELSTEIN: Objection.
 4 Foundation. Misstates his title.
 5 THE WITNESS: Not to my
 6 knowledge.
 7 BY MR. STEPHENS:
 8 Q. Did the diversion control
 9 group under Mr. Rannazzisi's leadership
 10 ever form an ARCOS review committee to
 11 analyze ARCOS data for leads to identify
 12 where diversion was occurring?
 13 MR. FINKELSTEIN: Vague.
 14 THE WITNESS: Could you
 15 please repeat that?
 16 BY MR. STEPHENS:
 17 Q. Sure. Did the diversion
 18 control group under Mr. Rannazzisi's
 19 leadership from 2006 to 2015 ever form an
 20 ARCOS review committee to analyze ARCOS
 21 data for leads to identify where
 22 diversion was occurring?
 23 MS. SINGER: Objection.
 24 Foundation.

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1 MR. FINKELSTEIN: Vague.
 2 THE WITNESS: Not to my
 3 knowledge.
 4 BY MR. STEPHENS:
 5 Q. Between 2006 and 2015 under
 6 Mr. Rannazzisi's leadership, did DEA ever
 7 institute any procedure whereby field
 8 divisions needed to establish an ARCOS
 9 review committee to analyze the leads
 10 received from DEA to assess how those
 11 leads could stop diversion?
 12 MR. FINKELSTEIN: Asked and
 13 answered. Vague.
 14 THE WITNESS: Not to my
 15 knowledge.
 16 BY MR. STEPHENS:
 17 Q. Was there any policy at DEA
 18 between 2006 and 2015 that would have
 19 prevented Mr. Rannazzisi, who ran the
 20 diversion control group, from instituting
 21 a procedure where the field divisions
 22 needed to establish an ARCOS review
 23 committee to analyze the leads
 24 received -- or any leads received from

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1 MR. FINKELSTEIN: Same
 2 objection.
 3 THE WITNESS: Not to my
 4 knowledge.
 5 BY MR. STEPHENS:
 6 Q. Okay. Between 2006 and
 7 2015, under Mr. Rannazzisi's leadership,
 8 did DEA ever institute any procedure
 9 whereby field divisions were required to
 10 establish an ARCOS review committee to
 11 analyze any ARCOS leads or information
 12 received by the field from DEA
 13 headquarters to assess how that
 14 information from ARCOS could identify
 15 where diversion was occurring in that
 16 district?
 17 MR. FINKELSTEIN: Vague.
 18 THE WITNESS: Not to my
 19 knowledge.
 20 BY MR. STEPHENS:
 21 Q. Was there any policy at the
 22 Drug Enforcement Administration between
 23 2006 and 2015 that would have prevented
 24 Mr. Rannazzisi from doing so?

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1 DEA headquarters to assess how those
 2 leads could stop diversion?
 3 MR. FINKELSTEIN: Asked and
 4 answered.
 5 MS. SINGER: Same objection
 6 to lack of foundation.
 7 THE WITNESS: Not to my
 8 knowledge.
 9 BY MR. STEPHENS:
 10 Q. Between 2006 and 2015 under
 11 Mr. Rannazzisi's leadership, did DEA
 12 headquarters ever institute a procedure
 13 where it placed diversion investigators
 14 at DEA headquarters as opposed to a field
 15 division who would be responsible for
 16 conducting proactive investigations based
 17 on leads generated by ARCOS?
 18 MS. SINGER: Objection.
 19 Foundation.
 20 MR. FINKELSTEIN: Vague.
 21 THE WITNESS: Could you
 22 please repeat that.
 23 BY MR. STEPHENS:
 24 Q. Sure.

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1 Between 2006 and 2015, under
 2 Mr. Rannazzisi's leadership of the
 3 diversion control group, did DEA
 4 headquarters under Mr. Rannazzisi's
 5 leadership ever institute a procedure
 6 where it placed diversion investigators
 7 at DEA headquarters as opposed to being
 8 housed in a field division who would be
 9 responsible for conducting proactive
 10 investigations based on leads generated
 11 by ARCOS?
 12 MS. SINGER: Objection.
 13 THE WITNESS: At one point
 14 there were no DIs in the ARCOS
 15 unit. But there are -- there were
 16 DIs placed in the ARCOS unit
 17 during that period. Kyle Wright
 18 was one. Nancy Jackson was one.
 19 Noreen Valentine was one. So the
 20 investigators were placed into
 21 that unit.
 22 BY MR. STEPHENS:
 23 Q. That's three. Can you
 24 identify any others?

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1 to repeat the question. That's all.
 2 Q. No, fair. I know you do.
 3 And I'm going to. I'm just trying to
 4 give you a little basis of the -- why I'm
 5 asking the question.
 6 My question is, if
 7 Mr. Rannazzisi was concerned that ARCOS
 8 leads were being ignored by the field
 9 divisions, he could have assembled a full
 10 team of DEA's diversion investigators and
 11 stationed that squad at DEA headquarters
 12 under his direct command to pursue ARCOS
 13 leads, true?
 14 MR. FINKELSTEIN: Incomplete
 15 hypothetical. Foundation.
 16 THE WITNESS: He could do
 17 that if he felt that. But I don't
 18 know if he ever felt that.
 19 BY MR. STEPHENS:
 20 Q. Okay. He never did that,
 21 right?
 22 A. He never did that, and we
 23 still haven't done that.
 24 Q. Okay. Between 2006 and 2015

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1 A. Not off the top of my head.
 2 Q. Okay. If -- if the deputy
 3 administrator in charge of the diversion
 4 control group was concerned that ARCOS
 5 information was being ignored by the
 6 field division, he could have assembled a
 7 full squad of diversion investigators,
 8 stationed them at DEA headquarters under
 9 his direct command to pursue that ARCOS
 10 information, true?
 11 MS. SINGER: Objection.
 12 Foundation.
 13 MR. FINKELSTEIN: Incomplete
 14 hypothetical. Calls for
 15 speculation.
 16 THE WITNESS: Could you
 17 please repeat that.
 18 BY MR. STEPHENS:
 19 Q. Yeah. This is just -- it's
 20 like a structural org chart-related-type
 21 question. Okay, Mr. Prevoznik?
 22 A. Mm-hmm.
 23 Q. Verbal. Okay?
 24 A. I gotcha. I just want you

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1 under Mr. Rannazzisi's leadership, did
 2 DEA headquarters ever institute a
 3 procedure where it placed diversion
 4 investigators at headquarters as opposed
 5 to a field division who would be
 6 responsible for investigating suspicious
 7 order report leads?
 8 MR. FINKELSTEIN: I withdraw
 9 my objection.
 10 THE WITNESS: So for -- our
 11 investigations are -- are usually
 12 from the field, so the field is
 13 investigating, headquarters does
 14 not investigate. We support and
 15 help coordinate a case. So the
 16 actual investigation is done at
 17 the field level, not at
 18 headquarters.
 19 BY MR. STEPHENS:
 20 Q. Okay. So if I understand
 21 your response, your response to my
 22 question is no, headquarters never
 23 instituted a procedure where it placed
 24 diversion investigators at headquarters

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1 as opposed to a field division who would
 2 then be responsible for investigating
 3 suspicious order report leads, correct?
 4 MR. FINKELSTEIN: Do you
 5 understand counsel's question?
 6 THE WITNESS: I do now.
 7 MS. SINGER: Objection.
 8 MR. FINKELSTEIN: Okay. You
 9 can answer counsel's question.
 10 THE WITNESS: No, we did not
 11 put anything in there.
 12 BY MR. STEPHENS:
 13 Q. Okay. I apologize. I've
 14 got a double negative here that I just
 15 want to confirm. I know what you're
 16 saying I think, but let me make sure I've
 17 got a clean record. Okay?
 18 Between 2006 and 2015, did
 19 DEA ever institute a procedure where it
 20 placed diversion investigators at DEA
 21 headquarters as opposed to a field
 22 division to investigate suspicious order
 23 report leads?
 24 MR. FINKELSTEIN: Asked and

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1 ARCOS analysis. Now you're asking
 2 about SORs, right?
 3 MR. STEPHENS: I just had
 4 that one question on SORs because
 5 it was similar to the ARCOS
 6 question.
 7 I will be asking him about
 8 SORs which is another 30(b)(6)
 9 topic here in a little bit,
 10 counsel.
 11 BY MR. STEPHENS:
 12 Q. All right. Let's return
 13 back to ARCOS.
 14 Okay, Mr. Prevoznik?
 15 A. Yes.
 16 Q. Yesterday, you had mentioned
 17 in 2018 DEA changed its process to
 18 provide more information out to
 19 registrants that related to ARCOS
 20 information?
 21 MR. FARRELL: Objection.
 22 Foundation.
 23 MR. STEPHENS: I'm just
 24 trying to -- to get back to where

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1 answered.
 2 THE WITNESS: No.
 3 BY MR. STEPHENS:
 4 Q. If a deputy administrator
 5 who ran division control from 2006 to
 6 2015 was concerned that suspicious order
 7 report leads were being ignored by the
 8 field divisions, he could have assembled
 9 a team of DEA's diversion investigators,
 10 placed that squad at DEA headquarters
 11 under his command to pursue those leads,
 12 right?
 13 MS. SINGER: Objection.
 14 Lack of foundation.
 15 MR. FINKELSTEIN: Incomplete
 16 hypothetical. Lack of foundation.
 17 THE WITNESS: So he could
 18 have done that. He didn't do it.
 19 And we still haven't done it.
 20 MR. FINKELSTEIN: Can I just
 21 make sure I'm following this?
 22 Because I want to make an
 23 appropriate objection.
 24 Before you were asking about

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1 we were yesterday.
 2 MR. FINKELSTEIN:
 3 Mischaracterizes prior testimony.
 4 THE WITNESS: Are you
 5 referring to the ARCOS tool?
 6 BY MR. STEPHENS:
 7 Q. Yes.
 8 So you testified yesterday
 9 about an ARCOS tool in 2018, right?
 10 A. Yes.
 11 Q. Okay. I'm going to give you
 12 what my understanding of your testimony
 13 was. You tell me if I've got anything
 14 wrong. Okay?
 15 My understanding of what you
 16 testified yesterday was in 2018, DEA
 17 leadership decided to provide some more
 18 information out to registrants from the
 19 ARCOS database that DEA had. Is that
 20 fair?
 21 A. Yes.
 22 Q. Okay. And the information
 23 that DEA decided to provide, and this
 24 was -- I'm sorry. Strike that and re-ask

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1 a new question.
 2 This was one of your ideas,
 3 right?
 4 A. Yes.
 5 Q. Okay. And this was one of
 6 your ideas because you were trying to
 7 reduce diversion, right?
 8 MS. SINGER: Objection.
 9 Foundation.
 10 THE WITNESS: Yeah -- yes.
 11 BY MR. STEPHENS:
 12 Q. Okay. The information in
 13 2018 that DEA decided to share was with
 14 other -- with other distributors -- was
 15 whether other -- let me strike it and
 16 restate it.
 17 And I'm going to -- I'm
 18 going to use like Distributor A,
 19 Distributor B, and Distributor C just for
 20 illustrative purposes.
 21 Okay, Mr. Prevoznik?
 22 A. Yes.
 23 Q. The information that DEA
 24 decided to provide in 2018 to a

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1 was being provided? Do I have that
 2 right?
 3 A. Almost.
 4 Q. Okay. Tell me what --
 5 A. Because it would include
 6 you.
 7 Q. Okay. So you would then --
 8 we've got A, B, C and D, right, that's
 9 four?
 10 A. Correct.
 11 Q. So at -- in 2018, what DEA
 12 would tell me, Distributor A, is there
 13 are four distributors including yourself
 14 who are supplying Customer A; is that
 15 right?
 16 MR. FINKELSTEIN: Hang on.
 17 Objection, Counsel. It -- it was
 18 Customer A first --
 19 MR. STEPHENS: Well, I'm --
 20 then I may have misspoken.
 21 BY MR. STEPHENS:
 22 Q. I don't think I did. Let me
 23 restate it, Mr. Prevoznik, and just tell
 24 me if I've got it wrong.

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1 registrant was the number of other
 2 distributors who were supplying a
 3 particular customer, true?
 4 MR. FINKELSTEIN: Objection.
 5 Mischaracterizes.
 6 THE WITNESS: It -- it's --
 7 it doesn't have to be a
 8 distributor. It's a supplier. So
 9 it could be manufacturer too. So
 10 whoever supplied that base code of
 11 drug, it would give the numerical
 12 of how many suppliers.
 13 BY MR. STEPHENS:
 14 Q. Right. Right. So let me
 15 state it this way, and you just tell me
 16 if I've got it right or I got it wrong.
 17 In 2018, if I'm
 18 Distributor A, and I'm supplying
 19 Customer A, and Distributors B, C, and D
 20 are supplying the same Customer A, DEA
 21 would tell me, Distributor A, there are
 22 three other distributors supplying
 23 Customer A.
 24 That's the information that

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1 In 2018, the change that was
 2 made was DEA would now tell Distributor A
 3 that there are four distributors
 4 including yourself who are supplying
 5 Customer A; is that right?
 6 A. Correct.
 7 Q. Okay.
 8 A. If I could --
 9 Q. Yeah.
 10 A. -- just based on the base
 11 code. Drug base code.
 12 Q. Okay. And what do you mean
 13 by that?
 14 A. Like hydrocodone. It's not
 15 going into specific products. It's
 16 hydrocodone.
 17 Q. Okay. In 2018, DEA did not
 18 tell me, Distributor A, the quantities
 19 that were being supplied to Customer A by
 20 Distributor B, C, and D, correct?
 21 A. Correct.
 22 Q. In 2019, DEA amended its
 23 process and now provides that
 24 information?

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1 A. Yes. De-identified.
 2 MR. FINKELSTEIN: Note for
 3 the record that the witness wasn't
 4 authorized to testify about
 5 decisions on or after
 6 February 2018. But as the witness
 7 is knowledgeable, I'll allow
 8 testimony.
 9 MR. STEPHENS: And -- and,
 10 Counsel, for your benefit, I'm
 11 just trying to identify time
 12 frames and all that so the record
 13 is complete. That's it.
 14 MR. FINKELSTEIN: Okay.
 15 MR. FARRELL: The plaintiffs
 16 continue their objection to any
 17 attempt by you to establish
 18 evidence that's probative of your
 19 affirmative defenses and
 20 prejudicial to our case in chief.
 21 MR. STEPHENS: I understand
 22 that you don't want me to get
 23 evidence that might hurt your
 24 case, Paul, but I think that's my

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1 addresses what we had just been talking
 2 about, Mr. Prevoznik. It states, "In
 3 February 2018, DEA launched a new tool in
 4 it's ARCOS online reporting system to
 5 assist drug manufacturers and
 6 distributors with their regulatory
 7 obligations under the Controlled
 8 Substances Act."
 9 Do you see that?
 10 A. Yes.
 11 Q. And that refers to your
 12 idea, right?
 13 A. Yes.
 14 Q. And that's where you are
 15 giving a distributor the number of
 16 distributors supplying to Customer A,
 17 right?
 18 A. Correct.
 19 Q. Okay. If you look at the
 20 third sentence in that paragraph, it
 21 talks -- it says, "The enhancement will
 22 allow a DEA-registered manufacturers and
 23 distributors to view and download the
 24 number of distributors and the amount,

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1 job.
 2 And if I understand,
 3 yesterday, the testimony from the
 4 DEA is the DEA does their job, and
 5 I'm not here to testify, but I am
 6 here trying to do my job. I hope
 7 you respect that. All right.
 8 MR. FINKELSTEIN: We don't
 9 have copies.
 10 MR. STEPHENS: Yes, sir.
 11 Yeah, we do.
 12 (Document marked for
 13 identification as Exhibit
 14 DEA-Prevoznik-19.)
 15 BY MR. STEPHENS:
 16 Q. All right. Mr. Prevoznik,
 17 I'm showing you what's been marked as
 18 Exhibit Number 19, which is a DEA press
 19 release dated February 26, 2019.
 20 Do you see that?
 21 A. Yes.
 22 Q. So in two-thousand -- if you
 23 look at the fourth paragraph on the first
 24 page, the very first sentence, I think

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1 anonymized data, in both grams and dosage
 2 units, each distributor sold to a
 3 prospective customer in the last
 4 available six months of data."
 5 Correct?
 6 A. Could I get another copy,
 7 because the exhibit went off the bottom.
 8 Cut off the last part of that sentence.
 9 I just want to make sure.
 10 MR. FINKELSTEIN: You can
 11 look at mine.
 12 THE WITNESS: Correct.
 13 BY MR. STEPHENS:
 14 Q. And the sentence that I just
 15 read about providing the volumes, that's
 16 the change that DEA made in 2019, right?
 17 MR. FINKELSTEIN:
 18 Mischaracterizes.
 19 THE WITNESS: Correct.
 20 BY MR. STEPHENS:
 21 Q. Okay. And then if you look
 22 at the last paragraph in this DEA press
 23 release, it states, "Manufacturers and
 24 distributors have consistently expressed

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1 a desire for assistance from DEA in
 2 fulfilling these obligations and have
 3 requested ARCOS information to help them
 4 make informed decisions about whether new
 5 customers are purchasing excessive
 6 quantities of controlled substances."
 7 Do you see that?
 8 A. Yes.
 9 Q. So DEA in 2019 understood
 10 that manufacturers and distributors have
 11 consistently expressed a desire for
 12 assistance from DEA in fulfilling their
 13 obligations, and as part of that,
 14 requested ARCOS information from DEA,
 15 right?
 16 MR. FINKELSTEIN: Objection.
 17 Form.
 18 MS. SINGER: Objection.
 19 Foundation.
 20 THE WITNESS: Well, over the
 21 years they've expressed this is
 22 business strategy protected. So
 23 we've done -- we've done that.
 24 But once the new tool, the

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1 MR. FINKELSTEIN:
 2 Mischaracterizes. Asked and
 3 answered.
 4 THE WITNESS: I think I just
 5 answered it.
 6 BY MR. STEPHENS:
 7 Q. Well, is this -- is this
 8 press release accurate?
 9 A. Well, yeah, because they --
 10 because I said, after the first came out,
 11 one of the complaints was -- that we've
 12 heard a number of times, it's not -- it's
 13 not enough.
 14 Q. Are you --
 15 A. So I'm just relaying what I
 16 know from my -- my personal discussions
 17 with some of the distributor registrants
 18 that asked for that. So that was the
 19 first time that I had heard that they
 20 wanted that. So -- and then the Support
 21 Act came in, and we were -- that was
 22 something that we were told that we
 23 needed to do, so -- statutorily, so...
 24 Q. Mr. Prevoznik, do you view

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1 first tool went out in 2018, we
 2 had feedback from quite a few of
 3 the distributors that said, hey,
 4 this would be great if we could
 5 get de-identified data. So that's
 6 why we put it in there. We were
 7 able to -- we felt comfortable
 8 enough to put that out there,
 9 because they had requested it at
 10 that point.
 11 They had -- to my knowledge,
 12 they had not expressed that they
 13 wanted that. When we had
 14 mentioned it, they were always --
 15 that's business data. Don't
 16 provide it. So...
 17 BY MR. STEPHENS:
 18 Q. You would agree that
 19 manufacturers and distributors have
 20 consistently expressed a desire for
 21 assistance from DEA in fulfilling these
 22 obligations and have requested ARCOS
 23 information to help them make informed
 24 decisions, right?

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1 this, sharing of more information with
 2 industry, as an example of DEA's current
 3 leadership taking additional steps to
 4 collaborate with industry to help reduce
 5 diversion?
 6 MS. SINGER: Objection.
 7 Foundation.
 8 THE WITNESS: Yes.
 9 BY MR. STEPHENS:
 10 Q. And do you think that's a
 11 good thing?
 12 MR. FINKELSTEIN: Vague.
 13 THE WITNESS: Yes.
 14 BY MR. STEPHENS:
 15 Q. All right. Are you familiar
 16 with an INNER JOIN process related to
 17 database management for databases like
 18 ARCOS?
 19 MR. FINKELSTEIN: Vague.
 20 Hang on. Don't testify based on
 21 law enforcement sensitive
 22 information.
 23 MS. SINGER: Objection.
 24 Scope.

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1 THE WITNESS: I don't know
 2 what an INNER JOIN --
 3 BY MR. STEPHENS:
 4 Q. Okay. An INNER JOIN process
 5 is a common SQL database concept that has
 6 been in existence for decades in a
 7 relationable database management systems
 8 where you can anonymize data and provide
 9 data to people who are sending products
 10 to the same individuals by using an
 11 individual, like customer A here, by
 12 using their Tax ID number, their
 13 registration number or something along
 14 those lines.
 15 Is anybody at DEA familiar
 16 with INNER JOIN database management
 17 protocols from 2006 to 2015 that you're
 18 aware of?
 19 MS. SINGER: Objection.
 20 Scope, and the witness's
 21 competence on these issues.
 22 MR. FINKELSTEIN: Scope.
 23 Calls for speculation.
 24 Do you understand the

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1 you to take huge chunks of data, be able
 2 to pull it down, and summarize it or --
 3 MR. FINKELSTEIN: Can you
 4 spell COGNOS?
 5 THE WITNESS: C-O-G-N-O-S, I
 6 believe. It's either N-O-S or
 7 N-U-S.
 8 BY MR. STEPHENS:
 9 Q. So COGNOS -- well, let me
 10 ask ARCOS first.
 11 Is ARCOS a system that DEA
 12 built, or is it a system that DEA
 13 purchased from a software vendor?
 14 MS. SINGER: Objection.
 15 Scope.
 16 THE WITNESS: It's my
 17 understanding it's a system that
 18 we built.
 19 BY MR. STEPHENS:
 20 Q. Okay. So then, if DEA built
 21 it, then DEA is going to have the
 22 expertise inhouse to understand how it
 23 works, right?
 24 A. Correct.

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1 question?
 2 THE WITNESS: It sounds like
 3 it's a software -- it sounds like
 4 to me it's a software question.
 5 We do have competent people within
 6 DEA. I am not one of the ones who
 7 would claim competency for that.
 8 MR. FARRELL: Can you spell
 9 that, INNER JOIN?
 10 MR. STEPHENS: Yeah, it's
 11 INNER JOIN, I-N-N-E-R, J-O-I-N.
 12 And if you look it up under SQL --
 13 SQL database management.
 14 BY MR. STEPHENS:
 15 Q. All right. So you do have
 16 people on staff at DEA who are tasked
 17 with understanding ARCOS's capabilities
 18 and maximizing the efficiency of ARCOS,
 19 true?
 20 A. True.
 21 Q. And you had mentioned COGNOS
 22 yesterday. Can you explain to me again
 23 what COGNOS is?
 24 A. So COGNOS basically allows

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1 Q. Okay. And how does COGNOS
 2 relate to ARCOS?
 3 A. COGNOS is a software that's
 4 used so that you can take the ARCOS data,
 5 huge quantities of ARCOS data, and be
 6 able to actually use it to do an analysis
 7 on it.
 8 Q. Okay. Is COGNOS software
 9 database or software system that DEA
 10 purchased from a vendor or did DEA create
 11 it?
 12 A. I believe it's a vendor.
 13 Q. It's a --
 14 A. I believe it's IBM.
 15 Q. Okay. IBM. A fine company,
 16 right?
 17 MR. FINKELSTEIN: Scope.
 18 MR. FARRELL: If you're
 19 representing IBM...
 20 MR. STEPHENS: All right.
 21 We'll stipulate to that. It's a
 22 fine company.
 23 BY MR. STEPHENS:
 24 Q. All right. But -- but so,

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1 you know, part of the function with --
 2 with COGNOS and ARCOS is to understand
 3 its capabilities. And if an INNER JOIN
 4 process would have been beneficial to
 5 reducing diversion, you would have hoped
 6 that someone at DEA would have worked on
 7 that, right?
 8 MR. FINKELSTEIN: Scope.
 9 Calls for speculation.
 10 Foundation.
 11 You can answer if you
 12 understand.
 13 THE WITNESS: I'm not sure I
 14 understand. I mean, we've been
 15 making improvements with -- with
 16 the system since we started so...
 17 BY MR. STEPHENS:
 18 Q. But can you agree with me
 19 that -- that the DEA would want to
 20 maximize the efficiency of that ARCOS
 21 database to do everything possible in the
 22 DEA's powers to reduce diversion?
 23 A. Yes.
 24 Q. And if using an INNER JOIN

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1 MR. FINKELSTEIN:
 2 Foundation, scope. Incomplete
 3 hypothetical.
 4 You can answer if you
 5 understand.
 6 THE WITNESS: I'm just
 7 having a little bit -- because I
 8 don't know what INNER JOIN is.
 9 You can tell me it's a SQL. You
 10 can tell me whatever. But is
 11 it -- does it have to work off the
 12 internet? Is it -- you know,
 13 that's what I'm saying. I'm not
 14 competent enough to -- to be
 15 answering that question.
 16 BY MR. STEPHENS:
 17 Q. Let me just ask a more
 18 general question.
 19 A. Sure.
 20 Q. You would agree with me that
 21 if people at DEA who are responsible for
 22 managing the architecture of the ARCOS
 23 database understood that there was a more
 24 efficient way to use ARCOS by making a

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1 process earlier would have been
 2 beneficial to that effort, you would have
 3 supported it, had you known about it?
 4 MS. SINGER: Objection.
 5 Foundation.
 6 MR. FINKELSTEIN:
 7 Foundation. Scope. Incomplete
 8 hypothetical.
 9 You can answer.
 10 THE WITNESS: Me personally?
 11 BY MR. STEPHENS:
 12 Q. Correct.
 13 A. Well, I mean, I'm not in a
 14 position to make a decision like that of
 15 what software we're going to use.
 16 That's -- that's an agency decision.
 17 Q. Would you agree that if the
 18 people at DEA who are responsible for
 19 managing the architecture of this
 20 database and its efficiency were aware of
 21 an INNER JOIN process earlier and that
 22 would have been beneficial to DEA's use
 23 of ARCOS, DEA would have supported doing
 24 that, right, using an INNER JOIN process?

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1 change, you would have supported them
 2 making that change to make it more
 3 efficient and effective, true?
 4 MS. SINGER: Objection.
 5 MR. FINKELSTEIN:
 6 Foundation. Incomplete
 7 hypothetical.
 8 You can answer.
 9 THE WITNESS: Yes.
 10 BY MR. STEPHENS:
 11 Q. Okay. I had asked you one
 12 question a little bit earlier about
 13 suspicious order reports. I would now
 14 like to turn to that topic and ask you a
 15 few questions about how and why DEA
 16 analyzes suspicious order reports to
 17 identify and stop sources of diversion.
 18 Okay?
 19 A. Yes.
 20 Q. This is Topic 9 of your
 21 30(b)(6) designation.
 22 Now, yesterday you had
 23 mentioned, in reporting suspicious order
 24 reports, you had said some come to

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1 headquarters, and some go to the field,
 2 right, if I understood what you said?
 3 A. Yes. Per the reg, they are
 4 supposed to go to the field. If they --
 5 if we've had some sort of action against
 6 a registrant, and we directed them to
 7 send it to headquarters, those would send
 8 it electronically.
 9 Q. Okay. And yesterday you had
 10 mentioned a "big three," right?
 11 A. Yes.
 12 Q. Okay. Walmart is not one of
 13 the big three, right?
 14 A. No.
 15 Q. And the other retail chain
 16 pharmacies that we've talked about today,
 17 they are not part of the big three,
 18 right?
 19 A. Well, just to clarify, we're
 20 talking -- because we started with
 21 distributors that you wanted to talk
 22 about distributors of, you know, of your
 23 chain stores. And then now you're
 24 asking -- or you're -- are you talking

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1 So when you said big three
 2 yesterday, were you referring to Walmart
 3 or not?
 4 A. No.
 5 Q. Okay. That -- that's all I
 6 was asking, Mr. Prevoznik. I'm sorry.
 7 A. Okay.
 8 Q. Would you agree that a
 9 suspicious order report presents DEA with
 10 a possible investigative lead that could
 11 result in DEA identifying someone who is
 12 diverting controlled substances?
 13 MR. FINKELSTEIN: Asked and
 14 answered.
 15 THE WITNESS: Yes.
 16 BY MR. STEPHENS:
 17 Q. If DEA investigates
 18 suspicious order reports, DEA expects and
 19 hopes that those investigations will lead
 20 to a reduction in diversion, fair?
 21 A. If -- if that's where it
 22 leads to. Not every -- not every SORs
 23 report is going to lead to diversion.
 24 Q. Okay. But does DEA hope

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1 the distributors of Walmart, or are you
 2 talking the pharmacies of Walmart in
 3 terms of this?
 4 Q. No, no, no -- no, no, no.
 5 I'm just trying to say, you had said the
 6 big three sends stuff to headquarters,
 7 right?
 8 A. Right. Distributors.
 9 Q. The big three distributors?
 10 A. Right.
 11 Q. And all I'm saying is -- is
 12 that when you said big three, you weren't
 13 referring to Walmart, right?
 14 A. Well, I just want -- I just
 15 want to clarify that we are talking about
 16 the big three distributors, because
 17 Walmart is a pretty big -- one of the
 18 bigger chain pharmacies out there. So I
 19 just want to make sure we're clear on
 20 that.
 21 Q. Right.
 22 A. That's all. I'm just
 23 clarifying that.
 24 Q. Okay, okay. All right.

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1 that investigations of SORs reports will
 2 lead to a reduction in diversion?
 3 A. Yes.
 4 Q. Has DEA identified sources
 5 of diversion based on information it
 6 received in suspicious order reports?
 7 MR. FINKELSTEIN: Don't
 8 testify based on ongoing
 9 investigations or enforcement
 10 activities.
 11 You can answer.
 12 BY MR. STEPHENS:
 13 Q. Just yes or no.
 14 A. Could you repeat, please?
 15 Q. Sure.
 16 MR. FINKELSTEIN: No current
 17 enforcement investigations, yes or
 18 no question.
 19 Do you want to repeat it?
 20 BY MR. STEPHENS:
 21 Q. Yes, let -- let me repeat
 22 the question. And I'm just asking for a
 23 yes or no. This is a baseline question.
 24 A. I know, but I have to listen

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1 to my instruction too.
 2 Q. Understood.
 3 Has DEA identified sources
 4 of diversion based on information DEA has
 5 received in suspicious order reports?
 6 A. Yes.
 7 Q. Okay. When DEA identifies a
 8 source of diversion via information in a
 9 suspicious order report, does DEA want to
 10 stop the supply of opioids to that source
 11 of diversion?
 12 A. Yes.
 13 Q. And does DEA want to stop
 14 the supply of opioids to that source of
 15 diversion as soon as DEA learns the
 16 identity of the suspected diverter?
 17 MR. FINKELSTEIN: Vague.
 18 THE WITNESS: Yes.
 19 BY MR. STEPHENS:
 20 Q. All right. Between 2007 and
 21 2018, DEA received over 1.2 million
 22 electronic suspicious order reports from
 23 registrants.
 24 A. Is that a -- it sounds like

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1 Q. Okay. Question Number 25
 2 there on Page 93, Mr. Prevoznik. Are you
 3 with me?
 4 A. Yes.
 5 Q. It says, "How many
 6 suspicious order reports does DEA now
 7 receive from distributors annually?"
 8 Did I read that right?
 9 A. Yes.
 10 Q. Okay. And the response, on
 11 the last sentence at the bottom of Page
 12 93 says, "DEA headquarters has received
 13 1,204,400 electronic suspicious order
 14 reports from 135 distinct registrants
 15 from 2007 to 2018."
 16 Do you see that?
 17 A. Yes.
 18 Q. Okay. Does that give you a
 19 little bit more precise number that DEA
 20 had on March 20th of 2018 when it was
 21 reporting back to Congress?
 22 A. Yes.
 23 Q. Okay. All right. So I have
 24 a few questions for you about how DEA

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1 it was a statement. I'm sorry.
 2 Q. It's a question. Is that
 3 true?
 4 A. Could you -- could you
 5 repeat the question.
 6 Q. Sure.
 7 Between 2007 and 2018 DEA
 8 received over 1.2 million electronic
 9 suspicious order reports from
 10 registrants, true?
 11 A. Yes.
 12 Q. Let me -- if I could point
 13 you back to Exhibit 17, which is the
 14 transcript from March -- or the senate
 15 congressional record from March 20, 2018.
 16 Do you have that in front of
 17 you?
 18 A. Yes.
 19 Q. I direct you to Page 93,
 20 Mr. Prevoznik.
 21 A. Okay.
 22 Q. And this is a Q&A, written
 23 Q&A between Congress and DEA, right?
 24 A. That's what it looks like.

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1 analyzes those SORs -- analyzed SORs
 2 between 2006 and 2015.
 3 Is it fair to say that DEA's
 4 current leadership has been working hard
 5 to improve how DEA reviews suspicious
 6 order reports?
 7 A. Yes.
 8 Q. Between 2006 and 2015 under
 9 Mr. Rannazzisi's leadership, did DEA have
 10 a published policy that ensured that
 11 someone at DEA would investigate every
 12 suspicious order report that DEA
 13 received?
 14 MS. SINGER: Objection.
 15 Lack of foundation.
 16 THE WITNESS: Not that I'm
 17 aware of.
 18 BY MR. STEPHENS:
 19 Q. Okay. Was there any policy
 20 at DEA that would have prevented
 21 Mr. Rannazzisi, who ran the diversion
 22 control group, from instituting a
 23 practice or policy that ensured that
 24 someone from DEA would investigate every

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1 suspicious order report that DEA
 2 received?
 3 MR. FINKELSTEIN: Objection
 4 to form.
 5 MS. SINGER: Objection.
 6 Foundation.
 7 THE WITNESS: Not to my
 8 knowledge.
 9 MR. FINKELSTEIN: For the
 10 record, I noticed the witness
 11 reached to his binder which
 12 contains DEA policies. Do you
 13 want to reference that to refresh
 14 your --
 15 THE WITNESS: Yeah, could
 16 I -- could I reference it?
 17 MR. STEPHENS: That's fine.
 18 Do you want to go off the record
 19 and do that? Let's do that.
 20 MR. FINKELSTEIN: Well,
 21 let's wait until there is a
 22 question pending.
 23 MR. STEPHENS: Okay. That's
 24 fine. I just don't want to burn

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1 MR. FINKELSTEIN: Hang on.
 2 MS. SINGER: Objection.
 3 Scope.
 4 MR. FINKELSTEIN: Scope.
 5 You can answer if you know.
 6 THE WITNESS: Yes.
 7 BY MR. STEPHENS:
 8 Q. Okay. Mr. Prevoznik, who is
 9 the greatest law enforcement agency in
 10 the world at investigating money
 11 laundering investigations?
 12 MS. SINGER: Objection.
 13 MR. FINKELSTEIN: Objection.
 14 Scope. Calls for speculation.
 15 You can answer.
 16 THE WITNESS: Do I have to?
 17 FBI.
 18 BY MR. STEPHENS:
 19 Q. Oh, you think it's FBI.
 20 Okay. Mr. Prevoznik, hold
 21 on. Hold on. Hold on.
 22 Mr. Prevoznik, you would
 23 agree with me that the Drug Enforcement
 24 Administration is one of the greatest law

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1 my time on the clock. If you need
 2 to review something, you want to
 3 take a break to do it, I'm fine
 4 with that, Mr. Prevoznik. Okay?
 5 Just let me know.
 6 MR. FINKELSTEIN: But you're
 7 allowed to review it if you need
 8 to to answer his question.
 9 THE WITNESS: Right. Thank
 10 you.
 11 BY MR. STEPHENS:
 12 Q. Yeah. Are we good?
 13 A. Yeah.
 14 Q. Okay. All right. Have you
 15 ever heard of a suspicious activity
 16 report known as a SAR?
 17 A. No. That doesn't --
 18 Q. Are you aware in banking
 19 circles that banks report SARs --
 20 A. Yeah.
 21 Q. -- suspicious activity
 22 reports, related to suspect transactions
 23 that they see traveling through their
 24 banks?

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1 enforcement agencies on the planet
 2 investigating money laundering
 3 investigations, correct?
 4 MR. FINKELSTEIN: Vague.
 5 Scope.
 6 THE WITNESS: Yes, correct.
 7 BY MR. STEPHENS:
 8 Q. Okay. And DEA, through
 9 OCEDEF, the Organized Crime Drug
 10 Enforcement Task Force, participates with
 11 other agencies, like your colleagues at
 12 the FBI, like your colleagues at the IRS,
 13 to do the most sophisticated money
 14 laundering investigations in the world,
 15 right?
 16 MR. FINKELSTEIN: Scope.
 17 THE WITNESS: Correct.
 18 BY MR. STEPHENS:
 19 Q. All right. Now, in
 20 conducting those money laundering
 21 investigations, it's common for the
 22 United States government, including DEA,
 23 to work on SAR review committees to
 24 review SARs to advance the money

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1 laundering investigations that they're --
 2 that they're working on through banking
 3 institutions, right?
 4 MS. SINGER: Objection.
 5 Scope.
 6 MR. FINKELSTEIN: We're well
 7 outside the scope.
 8 MS. SINGER: This is so far
 9 beyond.
 10 MR. FINKELSTEIN: You can
 11 answer if you know.
 12 THE WITNESS: Yeah -- yes.
 13 BY MR. STEPHENS:
 14 Q. Okay. Between 2006 and
 15 2015, under the leadership of
 16 Mr. Rannazzisi, did DEA headquarters have
 17 a procedure by which it formed a SORs
 18 review committee, a suspicious order
 19 review committee, at DEA headquarters to
 20 analyze all of the SORs received by DEA
 21 from registrants?
 22 MR. FINKELSTEIN: Vague.
 23 MS. SINGER: Lack of
 24 foundation.

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1 investigation by DEA?
 2 MR. FINKELSTEIN:
 3 Foundation. Vague.
 4 THE WITNESS: Not to my
 5 knowledge.
 6 BY MR. STEPHENS:
 7 Q. Was there any policy at DEA
 8 that would have prevented Mr. Rannazzisi
 9 from forming a SORs review committee at
 10 DEA headquarters to analyze all of the
 11 SORs, the suspicious order reports,
 12 received by DEA from registrants between
 13 2006 and 2015?
 14 MR. FINKELSTEIN: Vague.
 15 THE WITNESS: Not to my
 16 knowledge.
 17 BY MR. STEPHENS:
 18 Q. Between 2006 and 2015 under
 19 Mr. Rannazzisi's leadership, did DEA have
 20 any field division institute a SORs
 21 review committee to analyze suspicious
 22 order reports received from registrants
 23 in that field division?
 24 A. Not -- no, not for those

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1 THE WITNESS: No. We still
 2 haven't, and you have the SORs
 3 that go to the field, as well as
 4 the SORs electronically, so...
 5 BY MR. STEPHENS:
 6 Q. Okay. Is there any central
 7 body anywhere within DEA that's organized
 8 and formed to review SORs, to have a
 9 central point of contact to determine
 10 whether a particular SOR would be really
 11 good for an investigation for DEA to
 12 pursue?
 13 MR. FINKELSTEIN: Vague as
 14 to time. Vague.
 15 BY MR. STEPHENS:
 16 Q. Let me restate it.
 17 Between 2006 and 2015, under
 18 the leadership of Mr. Rannazzisi, was
 19 there any central body anywhere within
 20 DEA organized and formed to review
 21 suspicious order reports so that DEA
 22 would have a central point of contact to
 23 determine whether a particular suspicious
 24 order report should be pursued for an

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1 that received. But we were doing
 2 investigations and analysis on those that
 3 we never received.
 4 Q. Okay. So my question is a
 5 little bit different. Let me reframe it.
 6 I think I understand your answer.
 7 Between 2006 and 2015, under
 8 Mr. Rannazzisi's leadership, did any DEA
 9 field division form a SORs review
 10 committee to analyze all SORs, suspicious
 11 order reports, received from registrants
 12 in that jurisdiction?
 13 MR. FINKELSTEIN: Vague.
 14 THE WITNESS: Not to my
 15 knowledge.
 16 BY MR. STEPHENS:
 17 Q. Okay. Was there any policy
 18 at DEA between 2006 and 2015, that would
 19 have prevented Mr. Rannazzisi from
 20 instituting a procedure by which field
 21 divisions were required to form a
 22 suspicious order review committee to
 23 analyze all of the suspicious order
 24 reports received within that field

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1 division?
 2 MR. FINKELSTEIN: Vague.
 3 THE WITNESS: Not to my
 4 knowledge.
 5 BY MR. STEPHENS:
 6 Q. Between 2006 and 2015 under
 7 Mr. Rannazzisi's leadership, did DEA
 8 headquarters institute any policy whereby
 9 DEA field divisions were required to
 10 DEA -- to update DEA headquarters
 11 regarding what, if anything, the field
 12 division had done to investigate inbound
 13 suspicious order reports?
 14 MS. SINGER: Objection.
 15 Foundation.
 16 THE WITNESS: Could you
 17 please repeat that?
 18 BY MR. STEPHENS:
 19 Q. Sure.
 20 Between 2006 and 2015 under
 21 Mr. Rannazzisi's leadership, did DEA
 22 headquarters institute any policy whereby
 23 DEA field divisions were required to
 24 update DEA headquarters regarding what,

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1 suspicious order reports were
 2 investigated by the field divisions?
 3 MR. FINKELSTEIN: Asked and
 4 answered.
 5 THE WITNESS: Not to my
 6 knowledge.
 7 BY MR. STEPHENS:
 8 Q. Was there any policy at DEA
 9 that would have prevented Mr. Rannazzisi
 10 and the diversion control group from
 11 instituting a practice that required the
 12 field division to update headquarters
 13 regarding the percentage of SORs reports
 14 that the field division had investigated?
 15 MR. FINKELSTEIN: Objection.
 16 MS. SINGER: Continuing
 17 objection to this. Lack of
 18 foundation.
 19 MR. FINKELSTEIN: Asked and
 20 answered.
 21 THE WITNESS: Not to my
 22 knowledge.
 23 BY MR. STEPHENS:
 24 Q. Between 2006 and 2015 under

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1 if anything, the field division had done
 2 to investigate inbound suspicious order
 3 reports the field division had received
 4 from registrants?
 5 A. Not to my knowledge.
 6 Q. Was there any policy at DEA
 7 between 2006 and 2015 that would have
 8 prevented Mr. Rannazzisi from instituting
 9 a practice that required the field
 10 divisions to update headquarters about
 11 what the field division had done to
 12 investigate inbound suspicious order
 13 reports?
 14 MR. FINKELSTEIN: Vague.
 15 MS. SINGER: Objection.
 16 Foundation.
 17 THE WITNESS: Not to my
 18 knowledge.
 19 BY MR. STEPHENS:
 20 Q. Between 2006 and 2015 under
 21 Mr. Rannazzisi's leadership did DEA have
 22 any process that would have allowed the
 23 diversion control group at DEA
 24 headquarters to know what percentage of

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1 Mr. Rannazzisi's leadership, did DEA
 2 headquarters have any procedure whereby
 3 someone at DEA input the suspicious order
 4 reports into any DEA central database for
 5 tracking purposes?
 6 MR. FINKELSTEIN: Vague.
 7 Foundation.
 8 THE WITNESS: Could -- we
 9 don't input. We don't input it,
 10 the registrants -- if it's going
 11 in electronically, the registrant
 12 sends it in via electronic. We
 13 don't input.
 14 BY MR. STEPHENS:
 15 Q. Okay. I gotcha.
 16 Between 2007 and 2015 under
 17 Mr. Rannazzisi's leadership, what
 18 percentage of suspicious order reports
 19 did DEA convert into immediate suspension
 20 orders?
 21 MR. FINKELSTEIN: Asked and
 22 answered.
 23 THE WITNESS: I don't know.
 24 BY MR. STEPHENS:

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1 Q. Okay.
 2 (Document marked for
 3 identification as Exhibit
 4 DEA-Prevoznik-20.)
 5 BY MR. STEPHENS:
 6 Q. Mr. Prevoznik, I'm showing
 7 you what has been marked as DEA
 8 exhibit -- or I'm sorry. What has been
 9 marked as Exhibit Number 20.
 10 Do you have it in front of
 11 you?
 12 A. Yes, I have it. Yes.
 13 Q. Okay. And this is a hearing
 14 transcript from January 25, 2018, related
 15 to "Combatting the Opioid Crisis:
 16 Exploiting Vulnerabilities in
 17 International Mail," before the permanent
 18 subcommittee on investigations.
 19 Do you see that?
 20 A. Yes.
 21 Q. Okay. And I would direct
 22 you to Page 275.
 23 A. That's the top number?
 24 Q. Yeah, at the top.

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1 Administration at headquarters was
 2 reviewing suspicious order reports, if
 3 anybody?
 4 A. What time, time period?
 5 Q. Say 2018.
 6 A. So the field had -- the
 7 field has access to it, so the field
 8 would review them.
 9 Q. Okay.
 10 A. That's part of their duties,
 11 is to review it.
 12 Q. Okay. Between 2006 and
 13 2015, was anyone at DEA headquarters
 14 reviewing suspicious order reports or was
 15 it all done in the field?
 16 A. It was done in the field,
 17 and I believe it was done at headquarters
 18 as well. It would be with Kyle Wright
 19 when he was in charge of the unit.
 20 Q. Okay. Anybody else at
 21 headquarters?
 22 A. Not that I'm aware of.
 23 Q. Okay. So it would have been
 24 Mr. Wright and Mr. Wright's team or

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1 All right. And -- so let me
 2 also direct you to Page 269 which is the
 3 second page of this exhibit. Just to set
 4 the context, Mr. Prevoznik.
 5 A. Okay.
 6 Q. So on -- on 269, these are
 7 questions for the record, Drug
 8 Enforcement Administration before the
 9 permanent subcommittee on investigations
 10 on January 25, 2018, right?
 11 A. Yes.
 12 Q. And it's -- it's common for
 13 DEA to receive written questions from
 14 Congress and then provide written
 15 responses, right?
 16 A. Yes.
 17 Q. Okay. And then if you look
 18 at Page 275, there's a question and an
 19 answer. Do you see that?
 20 A. I'm getting there, yep.
 21 Q. Okay. And before we get
 22 there, let me ask you one follow-up
 23 question.
 24 Who at the Drug Enforcement

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1 squad, right?
 2 A. Correct.
 3 Q. Okay. Now, turning back to
 4 Exhibit Number 20.
 5 The -- you'll see that
 6 the -- the question is -- well, the --
 7 the question states: "The argument has
 8 been made in the Washington Post and
 9 elsewhere that enforcement efforts at DEA
 10 slowed down long before the 2016 law,"
 11 right?
 12 Do you see that?
 13 A. Yes.
 14 Q. Okay. And in response, part
 15 of the response, "DEA provides actions
 16 leading to registration revocation
 17 statistics."
 18 Do you see that?
 19 A. Did you read that from
 20 somewhere or?
 21 Q. So I'm just looking at
 22 the -- at the top of the chart right
 23 here, Mr. Prevoznik.
 24 A. Oh okay. All right. Yeah,

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1 I just wanted --
 2 Q. Yeah, sure.
 3 A. I wasn't sure exactly where
 4 you were. Go ahead.
 5 Q. So DEA provided to Congress
 6 a chart of statistics in this response,
 7 right?
 8 A. Yes.
 9 Q. And the chart reflects the
 10 actions leading to registration
 11 revocation for fiscal year 2007 to 2017,
 12 right?
 13 A. Yes.
 14 Q. And the government's fiscal
 15 year runs from October 1st to
 16 September 30th, right?
 17 A. Yes.
 18 Q. All right. If you look, the
 19 question that I had asked before we went
 20 to this chart was whether you knew the
 21 percentage of suspicious order reports
 22 that DEA converted into immediate
 23 suspension orders, right?
 24 MR. FINKELSTEIN: Asked and

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1 to show cause, and perhaps they
 2 got suspended. There was some
 3 administrative action because they
 4 did not report them.
 5 BY MR. STEPHENS:
 6 Q. All right. But my point,
 7 Mr. Prevoznik, is simply that the 254
 8 immediate suspension orders that are
 9 listed here between 2007 and 2017, not
 10 every one of them was the result of DEA
 11 following up on a suspicious order report
 12 that had been sent to DEA; is that fair?
 13 MR. FINKELSTEIN: Are you
 14 representing to the witness that
 15 these numbers add up to 254?
 16 MR. STEPHENS: Yes.
 17 BY MR. STEPHENS:
 18 Q. I will represent to you that
 19 for the immediate suspension orders, the
 20 totals from 2007 to 2017, is 254. I will
 21 represent to you that the order to show
 22 cause filed from 2007 to 2017 is 638.
 23 And I'll also represent to you that the
 24 total column from 2007 to 2017 is 9,851.

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1 answered.
 2 THE WITNESS: Yes.
 3 BY MR. STEPHENS:
 4 Q. Okay. Now, you would agree
 5 with me, wouldn't you, that in the
 6 suspension orders that are identified
 7 here from 2007 to 2017, not all of those
 8 were the result of DEA following up on a
 9 suspicious order report; is that fair?
 10 MR. FINKELSTEIN: Calls for
 11 speculation.
 12 THE WITNESS: Well, I mean
 13 some of them were because they
 14 weren't being filed, so...
 15 BY MR. STEPHENS:
 16 Q. Okay.
 17 MR. FINKELSTEIN: You can
 18 finish your answer.
 19 THE WITNESS: So they
 20 would -- it was registrants that
 21 had not filed. So there was
 22 action taken against those that
 23 did not file. So it would be
 24 either -- fall under an ISO, order

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1 Okay?
 2 A. Okay.
 3 MR. FINKELSTEIN: Counsel is
 4 telling you that.
 5 THE WITNESS: Okay.
 6 MR. FINKELSTEIN: We haven't
 7 checked his math.
 8 MR. STEPHENS: You're
 9 welcome to do so.
 10 BY MR. STEPHENS:
 11 Q. So my question,
 12 Mr. Prevoznik, was, would you agree with
 13 me that the 254 suspension orders that
 14 are listed here from 2007 to 2017, not
 15 every one of them was generated as the
 16 result of DEA following up on an
 17 investigation of a SOR report the DEA had
 18 received; is that fair?
 19 MR. FINKELSTEIN: Asked and
 20 answered.
 21 THE WITNESS: Yes.
 22 BY MR. STEPHENS:
 23 Q. Okay. For today's purposes,
 24 let's assume that every one of these 254

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1 was generated by the -- were all the
 2 result of DEA receiving and investigating
 3 a suspicious order report. All right.
 4 I'll give you the benefit of that, okay?
 5 A. Okay.
 6 Q. If you take 254 against the
 7 one point -- against the 1,204,400 SORs
 8 reports the DEA received, that would
 9 equate to something along the lines of
 10 2/100 of 1 percent. Do you agree with
 11 that?
 12 A. I didn't do the math, but
 13 I'll go with -- I'll go with you.
 14 Q. Okay. So would you agree
 15 the DEA would have obtained less than
 16 1 percent of immediate suspension orders
 17 off the 1.2 million suspicious order
 18 reports that DEA received?
 19 MR. FARRELL: Objection.
 20 Foundation. And I think you just
 21 bait and switched here a little
 22 bit.
 23 MR. STEPHENS: I didn't mean
 24 to. So let me check my question.

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1 regarding that.
 2 I mean, it's a hypothetical.
 3 BY MR. STEPHENS:
 4 Q. Between 2007 and 2017, the
 5 percentage of suspicious order reports
 6 the DEA received and converted into
 7 immediate suspension orders is less than
 8 1 percent, true?
 9 A. Yes. In your hypothetical,
 10 true.
 11 Q. All right. So between 2007
 12 and 2017, the percentage of suspicious
 13 order reports that DEA converted into
 14 orders to show cause, the 638 here,
 15 that's also less than 1 percent. It is
 16 .005 or 5/100 of 1 percent?
 17 MR. FARRELL: Objection.
 18 Foundation.
 19 MR. FINKELSTEIN:
 20 Foundation. Misstates prior
 21 testimony.
 22 THE WITNESS: It's a
 23 hypothetical. I'll go with you.
 24

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1 BY MR. STEPHENS:
 2 Q. So my question is this:
 3 Assuming that all 254 of the immediate
 4 suspension orders that DEA received from
 5 2007 to 2017 were based off of suspicious
 6 order reports, and DEA received
 7 1.2 million suspicious order reports, you
 8 would agree with me that the percentage
 9 of suspicious order reports that DEA
 10 converted into immediate suspension
 11 orders was less than 1 percent?
 12 MR. FINKELSTEIN:
 13 Foundation. Misstates prior
 14 testimony.
 15 THE WITNESS: Well, I mean,
 16 I think that's a unique way to
 17 look at it. You can also do the
 18 flip side and say how many weren't
 19 reported that we had cases on.
 20 And to just limit it to the ISOs
 21 doesn't take you to putting people
 22 in compliance, whether through
 23 letters of admonition or MOAs that
 24 we've come to with companies

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1 BY MR. STEPHENS:
 2 Q. Okay. Between 2007 and
 3 2017, if you include everything in the
 4 table, orders to show cause, immediate
 5 suspension orders filed, voluntary
 6 surrenders, the 9,851 totaled from 2007
 7 and 2017, the percentage of those against
 8 the 1.2 million of suspicious order
 9 reports would result in a conversion rate
 10 of less than 1 percent?
 11 MR. FARRELL: Objection.
 12 Fuzzy math.
 13 MR. FINKELSTEIN: Which rule
 14 is that?
 15 Foundation. Misstates prior
 16 testimony.
 17 You can answer if you
 18 understand.
 19 BY MR. STEPHENS:
 20 Q. Let me ask you a more
 21 precise question.
 22 A. All right.
 23 Q. Okay. What I want you to
 24 do, is I'm going to ask about the 9,851,

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1 the full total, okay. Are you with me?
 2 A. I'm with you.
 3 Q. Okay. So between 2007 and
 4 2017, if you include the voluntary
 5 surrenders, immediate suspension orders,
 6 the order to show causes, the percentage
 7 of suspicious order reports that DEA
 8 converted of the suspicious order reports
 9 is less than 1 percent?
 10 MR. FINKELSTEIN:
 11 Foundation. Misstates prior
 12 testimony.
 13 THE WITNESS: In your
 14 hypothetical situation, yes.
 15 BY MR. STEPHENS:
 16 Q. Okay. Do you know what
 17 percentage of suspicious order reports
 18 DEA converted into criminal indictments
 19 between 2007 and 2017?
 20 MR. FINKELSTEIN: Vague.
 21 THE WITNESS: I do not.
 22 BY MR. STEPHENS:
 23 Q. Do you know -- okay. So
 24 between 2007 and 2017, would you know

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1 from suspicious order reports like it
 2 does in its OCDETF reporting where it
 3 identifies investigations initiated,
 4 indictments returned, convictions
 5 obtained?
 6 MR. FINKELSTEIN: Calls for
 7 speculation.
 8 And I instruct you not to
 9 answer based on internal
 10 deliberative communications.
 11 THE WITNESS: We do have
 12 those statistics for that. But
 13 not based off of a SOR lead or an
 14 ARCOS lead. Those are just
 15 pointers. There's various other
 16 factors get into what a case --
 17 how a case started, where it went,
 18 and what its final disposition
 19 was.
 20 (Document marked for
 21 identification as Exhibit
 22 DEA-Prevoznik-21.)
 23 BY MR. STEPHENS:
 24 Q. Okay. Mr. Prevoznik, I'm

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1 what percentage of suspicious order
 2 reports DEA converted into criminal
 3 convictions?
 4 MR. FINKELSTEIN: Vague.
 5 THE WITNESS: I do not.
 6 BY MR. STEPHENS:
 7 Q. Does DEA keep those kind of
 8 statistics?
 9 A. No, we don't.
 10 Q. Okay. You're aware that DEA
 11 keeps those kind of statistics,
 12 investigations initiated, indictments
 13 returned, convictions obtained on all of
 14 their OCDETF cases and reports them. Are
 15 you aware of that?
 16 A. Correct, yes.
 17 Q. Okay.
 18 A. I thought you were asking
 19 specific to suspicious order reports.
 20 Q. I absolutely was.
 21 Is there a reason why DEA
 22 does not report the number of indictments
 23 returned, investigations initiated, and
 24 convictions obtained based on information

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1 showing you what's been marked as Exhibit
 2 Number 21.
 3 MR. STEPHENS: I'm sorry,
 4 Counsel.
 5 MR. FINKELSTEIN: We're
 6 going to attempt to claw 21 back
 7 too.
 8 MR. STEPHENS: Basis?
 9 MR. FINKELSTEIN:
 10 Deliberative process.
 11 Attorney/client. 21 is an e-mail
 12 attaching, I can't remember what
 13 exhibit number, but we previously
 14 notified you that we were going to
 15 clawback.
 16 MR. STEPHENS: This one?
 17 MR. FINKELSTEIN: Yes.
 18 MR. STEPHENS: Okay. I sent
 19 this one in -- to counsel on
 20 Monday with a stack of potential
 21 exhibits and didn't hear anything
 22 back.
 23 MR. FINKELSTEIN: And we're
 24 telling you, as we told you

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1 yesterday, that we're attempting
 2 to claw it back.
 3 If you ask the witness
 4 questions I'll instruct him not to
 5 answer.
 6 MR. BENNETT: Okay. And --
 7 and for the record, you did send
 8 that to me. I was never able to
 9 access it and open it. So I never
 10 reviewed your documents. They
 11 didn't come through.
 12 MR. STEPHENS: All right.
 13 So I didn't hear that back --
 14 MR. BENNETT: Well, and I
 15 was traveling, so -- yeah, you're
 16 right --
 17 MR. STEPHENS: Okay. But
 18 again for the record --
 19 MR. BENNETT: But I never
 20 looked at them.
 21 MR. STEPHENS: That's fine.
 22 For the record, James, I
 23 sent it to everybody on the DEA
 24 team. Okay?

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1 five minutes.
 2 MR. FARRELL: And then after
 3 that, what do you think?
 4 MR. STEPHENS: Yeah, I'll
 5 need to confer with my colleagues.
 6 MR. FARRELL: Oh, so you're
 7 getting close?
 8 MR. STEPHENS: Yes.
 9 BY MR. STEPHENS:
 10 Q. Mr. Prevoznik, in enforcing
 11 the Controlled Substances Act does DEA
 12 believe that every individual is entitled
 13 to due process in every investigation
 14 that DEA conducts to enforce the
 15 Controlled Substances Act?
 16 MR. FINKELSTEIN: Scope.
 17 Calls for a legal conclusion.
 18 You can answer.
 19 THE WITNESS: Yes.
 20 BY MR. STEPHENS:
 21 Q. Does DEA believe that the
 22 DEA must assess the facts as to each
 23 individual actor separately to determine
 24 whether an individual has violated the

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1 Everyone who is counsel here
 2 today, all four of you received
 3 that from me.
 4 MR. FINKELSTEIN: And you
 5 have our answer.
 6 MR. FARRELL: Okay. So just
 7 to be clear, am I allowed to read
 8 this or not allowed to read this?
 9 MR. FINKELSTEIN: We're
 10 attempting to claw it back.
 11 MR. STEPHENS: And -- and
 12 for the record, let me apologize.
 13 If this was used yesterday, I am
 14 down at the end of the table, I
 15 didn't get a copy of it. So I --
 16 I wasn't aware -- I reserve, as my
 17 colleague reserves, our position
 18 on this document.
 19 BY MR. STEPHENS:
 20 Q. Mr. Prevoznik?
 21 MR. FARRELL: Not to be
 22 rude, but is there an expected
 23 break time soon?
 24 MR. STEPHENS: Yeah, like

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1 Controlled Substances Act?
 2 A. Yes.
 3 Q. DEA would not take the
 4 actions of a few bad actors and seek to
 5 indict everyone who might live in the
 6 same neighborhood as those bad actors,
 7 fair?
 8 A. Correct.
 9 MS. SINGER: Objection.
 10 Scope.
 11 BY MR. STEPHENS:
 12 Q. You'd agree that simply
 13 being close in proximity to a bad actor
 14 does not mean that an individual has done
 15 anything wrong, right?
 16 MR. FINKELSTEIN: Vague.
 17 You can answer.
 18 THE WITNESS: Correct.
 19 BY MR. STEPHENS:
 20 Q. For example, if someone
 21 overdoses on Colombian cocaine in
 22 Cleveland, would DEA arrest every
 23 Colombian native who leaves in Cleveland
 24 and charge them for causing that

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1 overdose?
 2 MR. FINKELSTEIN: Scope.
 3 Incomplete hypothetical.
 4 MR. FARRELL: This has a
 5 traumatic impact upon like the
 6 Colombian nationality, so you have
 7 to be careful here.
 8 MR. STEPHENS: Trust me. I
 9 always was.
 10 BY MR. STEPHENS:
 11 Q. Can you answer the question?
 12 A. Not to my knowledge.
 13 Q. You'd agree that DEA needs
 14 individualized proof to establish exactly
 15 who caused that overdose death before
 16 deciding to charge anyone with a crime,
 17 right?
 18 MR. FINKELSTEIN: Hang on.
 19 Incomplete hypothetical. Scope.
 20 THE WITNESS: Can you repeat
 21 it?
 22 BY MR. STEPHENS:
 23 Q. You would agree the DEA
 24 needs individualized proof to establish

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1 Q. You would agree that due
 2 process principles that existed in our
 3 legal system for generations demand that
 4 DEA not haul innocent actors into court
 5 to answer for the actors for a few bad
 6 actions?
 7 MS. SINGER: Scope. And
 8 calls for a legal analysis and
 9 conclusion.
 10 MR. FINKELSTEIN: Scope.
 11 Calls for a legal conclusion. And
 12 based on your representation that
 13 it will be about five minutes, I'm
 14 going to let the witness answer.
 15 MR. STEPHENS: Two minutes.
 16 THE WITNESS: Correct.
 17 BY MR. STEPHENS:
 18 Q. And DEA agrees that those
 19 due process principles still protect
 20 innocent actors even when the legal issue
 21 involves something as tragic as a heroin
 22 overdose, right?
 23 MS. SINGER: Continuing
 24 objection.

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1 exactly who caused that overdose death
 2 before deciding to charge anyone with a
 3 crime?
 4 MS. SINGER: Objection.
 5 Scope.
 6 THE WITNESS: Yes.
 7 BY MR. STEPHENS:
 8 Q. Okay. And to counsel's
 9 point, it might be a mistake for DEA to
 10 assume it was a Colombian native who sold
 11 the cocaine to the victim, right?
 12 MR. FINKELSTEIN: Incomplete
 13 hypothetical. Vague.
 14 THE WITNESS: Yes.
 15 BY MR. STEPHENS:
 16 Q. Okay. And it's important
 17 not to bring any potential bias in
 18 analyzing evidence because it could cloud
 19 the judgment of the investigator, right?
 20 MR. FINKELSTEIN: Vague.
 21 Incomplete hypothetical.
 22 MS. SINGER: Scope.
 23 THE WITNESS: Yes.
 24 BY MR. STEPHENS:

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1 MR. FINKELSTEIN: Calls for
 2 a legal conclusion. You can
 3 answer.
 4 THE WITNESS: Correct.
 5 BY MR. STEPHENS:
 6 Q. Does DEA believe that the
 7 same due process principles that require
 8 individualized proof also apply to the
 9 diversion investigations DEA conducts to
 10 enforce the provisions of the Controlled
 11 Substances Act?
 12 MR. FINKELSTEIN: Calls for
 13 a legal conclusion. You can
 14 answer.
 15 THE WITNESS: I was waiting
 16 to see -- correct.
 17 BY MR. STEPHENS:
 18 Q. And you would agree that
 19 every manufacturer, distributor, and
 20 retail chain pharmacy is entitled to
 21 individualized review of its own conduct
 22 before being accused for potential
 23 violations of the Controlled Substances
 24 Act committed by someone else?

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1 A. Correct.
 2 Q. For example, you'd agree
 3 that DEA should not accuse a retail chain
 4 pharmacy of diversion committed by a
 5 rogue internet pharmacy where there is no
 6 evidence showing any connection between
 7 the retail chain pharmacy and -- and the
 8 rogue internet pharmacy?
 9 MR. FINKELSTEIN: Incomplete
 10 hypothetical.
 11 MR. STEPHENS: I'll withdraw
 12 the question.
 13 All right. Let me take a
 14 break.
 15 THE VIDEOGRAPHER: The
 16 parties agree?
 17 MR. FINKELSTEIN: Yes.
 18 THE VIDEOGRAPHER: 10:57.
 19 We are off the video record.
 20 (Short break.)
 21 THE VIDEOGRAPHER: 11:34, we
 22 are on the video record.
 23 MR. STEPHENS: I think I'm
 24 at the end of my questions. I do

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1 THE WITNESS: Thank you.
 2 - - -
 3 EXAMINATION
 4 - - -
 5 BY MR. FARRELL:
 6 Q. Will you state your name,
 7 rank, and title?
 8 A. Thomas Prevoznik. I am the
 9 acting section chief of pharmaceutical
 10 investigations for the DEA's diversion
 11 control division.
 12 Q. Mr. Prevoznik, my name is
 13 Paul Farrell, and I am one of the lawyers
 14 representing the plaintiffs. And so I
 15 thank you for coming here today. And I
 16 just wanted to set for the record, we
 17 sent a list of subject matters to the
 18 United States Drug Enforcement Agency and
 19 asked for somebody to be designated to
 20 testify on its behalf.
 21 You understand that the
 22 questions that I ask you today are not in
 23 your individual capacity, but we're
 24 asking for answers as if it was coming

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1 have one question for you though,
 2 David, and it's to make sure that
 3 I understand your complete basis
 4 for clawing back the document
 5 which is the -- I think it was
 6 marked Number 12. It's the
 7 June 3rd, 2017, communication
 8 between Mr. Patterson and
 9 Mr. Rosenberg that includes a
 10 communication from AUSA and Leslie
 11 Wizner from Detroit.
 12 MR. FINKELSTEIN: Correct,
 13 the basis for the clawback request
 14 was that this document is
 15 deliberative process, intra-DOJ
 16 discussions regarding improvements
 17 and enforcement protocols under
 18 the Controlled Substances Act and
 19 also attorney/client privilege.
 20 MR. STEPHENS: Thank you.
 21 And at this point we'll pass the
 22 witness.
 23 Thank you for your time,
 24 Mr. Prevoznik.

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1 from the DEA itself.
 2 A. Correct.
 3 Q. So the million-dollar
 4 question right out of the gate is, why
 5 didn't the DEA do more?
 6 So what I want to do is, I
 7 have the testimony from the former acting
 8 administrator, Robert Patterson. And I'm
 9 going to show you a video clip and then
 10 ask some follow-up questions. Okay?
 11 MS. MAINIGI: Objection.
 12 THE WITNESS: Okay.
 13 MR. FARRELL: 523.
 14 BY MR. FARRELL:
 15 Q. This is Mr. Patterson's
 16 opening statement I believe his testimony
 17 before Congress on March 20, 2018, in
 18 front of the subcommittee on oversight
 19 and investigations, the committee on
 20 Energy and Commerce.
 21 You're aware that
 22 Mr. Patterson testified?
 23 A. Yes.
 24 Q. And he testified on behalf

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1 of the DEA?
 2 A. Yes.
 3 Q. To Congress under oath?
 4 A. Yes.
 5 MR. FARRELL: Show the first
 6 clip, please.
 7 (Video clip played as
 8 follows:)
 9 MR. PATTERSON: Where
 10 license revocation is not
 11 necessary, we've aggressively
 12 pursued civil actions and MOUs
 13 designed to ensure compliance.
 14 Over the last decade, DEA has
 15 levied fines totalling nearly
 16 \$390 million against opioid
 17 distributors nationwide and
 18 entered into MOUs with each.
 19 (Video concluded.)
 20 BY MR. FARRELL:
 21 Q. Mr. Prevoznik, can you
 22 verify the accuracy of that statement?
 23 A. Yes.
 24 Q. So the DEA has in fact

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1 this trial, the jury has heard probably
 2 several times, is the Energy and
 3 Commerce's report following the testimony
 4 of Mr. Patterson as well as the testimony
 5 from numerous others.
 6 Are you familiar with this
 7 report?
 8 A. Yes, I am.
 9 Q. And this is on one
 10 particular page, one of the findings and
 11 the markings up are the lawyers, not from
 12 Congress. You'll see where I put the
 13 Star. And it basically says, "Had
 14 HDA" -- "Had DEA more proactively used
 15 ARCOS data, it could have discovered, in
 16 a period of time at a place called
 17 Sav-Rite Pharmacy Number 1 that there
 18 were a lot of pills that were shipped."
 19 Are you familiar with this
 20 finding from Congress?
 21 MS. MAINIGI: Objection.
 22 THE WITNESS: Yes.
 23 BY MR. FARRELL:
 24 Q. So when you and I walk

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1 attempted to impose civil penalties and
 2 conducted investigations into opioid
 3 distribution and diversion?
 4 A. Correct.
 5 Q. I'm going to go to the next
 6 clip. This is where the follow-up really
 7 begins.
 8 (Video clip played as
 9 follows:)
 10 MR. PATTERSON:
 11 Administrative actions, civil
 12 fines, and criminal cases are all
 13 important steps. Where we have
 14 fallen short in the past, it is by
 15 not proactively leveraging the
 16 data that has been available to
 17 us.
 18 (Video concluded.)
 19 BY MR. FARRELL:
 20 Q. Mr. Prevoznik, are you
 21 familiar with that complaint?
 22 A. Yes.
 23 Q. I'm also going to show you
 24 what has been previously referenced in

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1 through the ARCOS data, what we're
 2 talking about is this dataset of
 3 information that you had, correct?
 4 A. Correct.
 5 Q. And these are transactions
 6 between manufacturers and distributors,
 7 between distributors and pharmacies, that
 8 are stored in a large database maintained
 9 by the DEA?
 10 A. Correct.
 11 Q. Okay. So what -- what does
 12 it mean when the DEA's position is that
 13 you are not proactively using the ARCOS
 14 data during this time frame?
 15 A. Well, back during that time
 16 frame, we were on what we called the
 17 mainframe. So the process was slower of
 18 ARCOS data, so when it would be uploaded
 19 and processed. And so we were months
 20 behind on getting that data up into the
 21 system.
 22 It was -- we were restricted
 23 to a million transactions of upload per
 24 night. And we received millions of

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1 transactions. So that took a while.
 2 In addition to that, you
 3 also had, when they uploaded, there would
 4 be errors, the most typical errors would
 5 be wrong NDC code, wrong DEA number, or
 6 the wrong DEA 222 order form number.
 7 Q. It's my understanding that
 8 today these transactions are stored
 9 digitally with the DEA ARCOS database; is
 10 that correct?
 11 A. Correct.
 12 Q. And now we are able to
 13 presently and retrospectively look back
 14 and figure out what happened. Is that
 15 fair?
 16 MS. MAINIGI: Objection.
 17 MR. EPPICH: Object to form.
 18 MR. STEPHENS: Objection.
 19 MR. O'CONNOR: Object to
 20 form.
 21 THE WITNESS: Yes.
 22 BY MR. FARRELL:
 23 Q. Okay. Now, this may be a
 24 terrible analogy, but my mind, what I'm

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1 THE WITNESS: Yes.
 2 BY MR. FARRELL:
 3 Q. So going back and looking
 4 backwards from this very same energy and
 5 commerce report, I happened to be
 6 familiar with it because of the West --
 7 because of West Virginia. The Sav-Rite
 8 Pharmacy from Page 125, Congress went
 9 back and looked at the old ARCOS data.
 10 And from it, what it's determined was
 11 that McKesson Corporation -- are you
 12 familiar with the company called
 13 McKesson?
 14 A. Yes, I am.
 15 Q. And who are they?
 16 A. They are a wholesaler,
 17 distributor.
 18 Q. McKesson Corporation sold
 19 five million doses in 2006 and 2007 of
 20 opium pills to a pharmacy in Kermit, West
 21 Virginia. Can you, by looking at this
 22 exhibit, tell me how many people,
 23 according to Congress, live in Kermit,
 24 West Virginia?

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1 thinking is, just like -- let's say if
 2 the NSA keeps a log of everybody's cell
 3 phone calls in the country, they're not
 4 actively listening to everyone's call,
 5 but they have the ability to go backwards
 6 and piece together what happened. Is
 7 that similar to what the DEA was doing
 8 with ARCOS?
 9 MS. MAINIGI: Objection.
 10 MR. STEPHENS: Objection.
 11 THE WITNESS: Yes.
 12 BY MR. FARRELL:
 13 Q. Same thing with the SEC.
 14 There are billions of trades that happen
 15 on Wall Street, but the SEC isn't
 16 necessarily the clearinghouse for these
 17 trades, but it has the capacity to look
 18 on a computer backwards and figure out
 19 what happened if somebody broke the law.
 20 Is that akin to what is going on with the
 21 DEA and ARCOS during this time frame?
 22 MR. EPPICH: Objection to
 23 form.
 24 MR. STEPHENS: Objection.

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1 MR. STEPHENS: Objection to
 2 form and scope.
 3 MR. O'CONNOR: Objection.
 4 MR. EPPICH: Objection.
 5 Foundation.
 6 THE WITNESS: 406.
 7 BY MR. FARRELL:
 8 Q. All right. So under any
 9 reasonable -- is there any possibly way
 10 that a town of 406 has a medical need for
 11 over five million pills of opium in a
 12 span of two years?
 13 MR. EPPICH: Objection.
 14 Foundation. Calls for
 15 speculation. Scope.
 16 MR. STEPHENS: Scope as
 17 well.
 18 MR. FINKELSTEIN: I'll join
 19 the scope objection.
 20 You can answer if you
 21 understand.
 22 THE WITNESS: Could you
 23 repeat it, please, one more time?
 24 BY MR. FARRELL:

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1 Q. Yeah. Is there any basis
 2 that you can make up in reality or
 3 otherwise where a town of 400 people have
 4 a medical need for five million pills of
 5 opium in a span of 24 months?
 6 MR. EPPICH: Objection.
 7 Form. Foundation. Scope. Calls
 8 for speculation.
 9 THE WITNESS: Correct.
 10 There isn't. There isn't.
 11 BY MR. FARRELL:
 12 Q. There is absolutely no way,
 13 is there?
 14 MR. EPPICH: Same
 15 objections.
 16 THE WITNESS: No.
 17 BY MR. FARRELL:
 18 Q. So while some people may ask
 19 the DEA why you didn't catch this, my
 20 question to the DEA is why didn't you
 21 indict McKesson?
 22 MR. EPPICH: Objection to
 23 form --
 24 MR. FINKELSTEIN: I'm going

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1 I -- I think that started
 2 the problem, quite frankly, and a
 3 lot of the frustration came from
 4 chasing down the registrants and
 5 ultimately reminding them of their
 6 responsibility in this regulated
 7 area.
 8 (Video concluded.)
 9 MR. FARRELL: So I'm going to
 10 strike that and we're going to
 11 start over, because I didn't lay a
 12 proper foundation for that part.
 13 BY MR. FARRELL:
 14 Q. Beyond the opening statement
 15 from the DEA to Congress through
 16 Mr. Patterson here, there were also
 17 questions and answers.
 18 So one of the questions
 19 Congress asked the DEA was: Why did the
 20 DEA communications with industry fail to
 21 prevent the kinds of major breakdowns
 22 apparent in West Virginia?
 23 I'm going to play for you
 24 Mr. Patterson's response.

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1 to instruct you not to answer
 2 that.
 3 MR. EPPICH: -- calls for a
 4 legal conclusion. Scope.
 5 Foundation.
 6 THE WITNESS: Based on my
 7 attorney's advice I'm not going to
 8 answer that.
 9 MR. FARRELL: Go to the next
 10 video clip, please.
 11 (Video clipped played as
 12 follows:)
 13 ROBERT PATTERSON: I think
 14 when you go back to that time
 15 frame on the suspicious orders
 16 reports, there was two major
 17 failures --
 18 MR. FARRELL: Stop right
 19 there for a second.
 20 ROBERT PATTERSON: -- there
 21 was either a lack of information
 22 contained therein. Or not filing
 23 them in -- in this instance that
 24 they had.

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1 (Video clip played as
 2 follows:)
 3 ROBERT PATTERSON: I think
 4 when you go back to that time
 5 frame on the suspicious orders
 6 reports, there was two major
 7 failures. One was either a lack
 8 of information contained therein,
 9 or not filing them in -- in this
 10 instance that they had. I think
 11 that started the problem, quite
 12 frankly, and a lot of the
 13 frustration came from chasing down
 14 the registrants and ultimately
 15 reminding them of their
 16 responsibility in this regulated
 17 area.
 18 (Video concluded.)
 19 BY MR. FARRELL:
 20 Q. My first question to you is,
 21 is which registrants is he referencing?
 22 MR. EPPICH: Objection.
 23 MR. NICHOLAS: I'm going to
 24 object on the basis that we're

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1 talking about different
 2 geographical -- with different
 3 geography, this is a Track 1 case
 4 relating to Track 1 jurisdictions
 5 only. I object on that basis.
 6 These are questions about
 7 West Virginia?
 8 MR. FARRELL: Yes, sir. So
 9 for the purposes of creating a
 10 record, I understand that you're
 11 preserving that right on CT 1.
 12 However, the DOJ has requested
 13 that we not put up Mr. Prevoznik
 14 for all 1600 cases and would
 15 prefer him to just to testify
 16 once.
 17 So to the extent this is
 18 relevant to CT 2, I'm going to go
 19 down this line.
 20 MR. NICHOLAS: Are you
 21 saying that you're not going to
 22 introduce this portion of the
 23 testimony or seek to introduce it
 24 in the Track 1 case?

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1 Are we talking about the
 2 wholesale distributors?
 3 A. Yes.
 4 MR. EPPICH: Objection.
 5 Form. Foundation.
 6 BY MR. FARRELL:
 7 Q. And then it says that the
 8 DEA was -- part of their frustration was
 9 having to chase down the registrants and
 10 remind them of their responsibilities.
 11 Can you explain what that
 12 means?
 13 What does the DEA mean when
 14 it says this to Congress?
 15 MR. EPPICH: Objection to
 16 form. Calls for speculation.
 17 THE WITNESS: It means that
 18 we, with our letters in 2006, we
 19 were reiterating what their
 20 responsibility was to report
 21 suspicious orders. They may
 22 needed to -- that the registrants
 23 needed to meet effective controls
 24 to guard against diversion.

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1 MR. FARRELL: No. What I'm
 2 saying is you preserved your
 3 objection to this for the CT 1,
 4 and we haven't made a decision on
 5 what we'll present in CT 1 or
 6 CT 2.
 7 MR. NICHOLAS: I made my
 8 objection.
 9 MR. EPPICH: I'll further
 10 object that this -- this line of
 11 questioning lack -- he lacks
 12 foundation for it. Calls for
 13 speculation.
 14 MR. FARRELL: Who do you
 15 represent?
 16 MR. EPPICH: McKesson.
 17 MR. FARRELL: Okay. Pretty
 18 good.
 19 BY MR. FARRELL:
 20 Q. Okay. Back on -- back on
 21 the questions.
 22 My question to you is, who
 23 is the DEA referencing when they are
 24 talking about chasing down registrants.

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1 BY MR. FARRELL:
 2 Q. Was it the DEA's assessment
 3 during this time frame, which is 2006 and
 4 2007, was that the wholesale distributors
 5 as an industry were not complying with
 6 their regulatory duties?
 7 MR. STEPHENS: Object to
 8 form.
 9 MR. FARRELL: Excuse me.
 10 Let me -- let me make sure I
 11 finish my question before you make
 12 your objection and let -- and then
 13 we'll get it all preserved.
 14 MR. STEPHENS: I thought you
 15 were finished.
 16 MR. FARRELL: So --
 17 MR. STEPHENS: I wanted to
 18 make sure I had the objection
 19 lodged before he answered the
 20 question. I apologize.
 21 MR. FARRELL: No question.
 22 So let me repeat the
 23 question.
 24 BY MR. FARRELL:

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1 Q. Was it the DEA's assessment
 2 during the time frame of 2006 and 2007
 3 that the wholesale distributors, as an
 4 industry, were not complying with their
 5 regulatory duties?
 6 MR. STEPHENS: Object to
 7 form.
 8 THE WITNESS: Correct.
 9 BY MR. FARRELL:
 10 Q. Now, we're going to go to
 11 the next clip.
 12 The follow-up with the DEA
 13 is that a congressman asked the DEA about
 14 the settlements with industry in the
 15 past. And asked them why the past
 16 settlements were not effective in
 17 achieving compliance.
 18 Here is Mr. Patterson's
 19 response on behalf of the DEA.
 20 (Video clip played as
 21 follows:)
 22 ROBERT PATTERSON: And
 23 again, this goes back to the
 24 frustration of the day. And I

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1 take other civil action or an
 2 injunctive action against the
 3 company, or we could criminally
 4 prosecute.
 5 BY MR. FARRELL:
 6 Q. Was the DEA in fact
 7 frustrated that registrants were
 8 blatantly violating the MOUs from prior
 9 administrative actions?
 10 MR. EPPICH: Object to form.
 11 THE WITNESS: Yes.
 12 BY MR. FARRELL:
 13 Q. And which registrants are we
 14 talking about in particular?
 15 MS. MAINIGI: Objection.
 16 Scope. I would like to go ahead
 17 and get an objection on the record
 18 and get a response from DOJ as
 19 well as it relates to individual
 20 defendants or individual
 21 registrants.
 22 Our understanding is that
 23 individual registrants or
 24 defendants are outside the scope

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1 know that the -- the folks that
 2 were in diversion back in 2010 and
 3 2012 struggled with the fact that
 4 these MOU or MOAs had been put in
 5 place with these companies and
 6 they blatantly violated them
 7 again.
 8 (Video concluded.)
 9 BY MR. FARRELL:
 10 Q. So my question to you is, is
 11 what can the DEA do if the civil
 12 penalties that they are imposing are not
 13 prohibitive or do not cause the wholesale
 14 distributors to change their conduct?
 15 MS. MAINIGI: Objection.
 16 Scope. Objection to form.
 17 MR. EPPICH: Object to the
 18 form. Calls for speculation.
 19 THE WITNESS: Okay. We
 20 could take -- we could file an
 21 order to show cause on them. If
 22 we could show imminent danger to
 23 the public, we could file an ISO
 24 against them. We could perhaps

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1 of this deposition.
 2 MS. SINGER: Just to respond
 3 to that, I think counsel for
 4 defendants asked numerous
 5 questions about whether Rite Aid
 6 or Walmart or various different
 7 entities engaged in certain
 8 conduct.
 9 This is consistent with that
 10 testimony that defendants
 11 themselves have elicited.
 12 MS. MAINIGI: It has nothing
 13 to do with the scope of what has
 14 been allowed by the --
 15 MR. STEPHENS: Nor was I
 16 talking about current or former
 17 investigations.
 18 MR. FINKELSTEIN: Well,
 19 you're certainly not authorized to
 20 talk about current investigations.
 21 Topic 2 is about enforcement
 22 activities. The clarification is,
 23 with respect to the type of
 24 enforcement activities, counsel

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1 for plaintiffs explained that
 2 plaintiffs seek information
 3 regarding administrative actions
 4 and/or settlements that DEA has
 5 entered into with any of the
 6 defendants, and our response is
 7 Mr. Prevoznik is authorized.
 8 So I'm not going to stop the
 9 witness from answering that
 10 question.
 11 MS. MAINIGI: Mr. Prevoznik
 12 is authorized to speak as to what?
 13 Because with respect to our
 14 Touhy requests, as I understand
 15 it, and there may be somebody who
 16 has it more at their fingertips
 17 than I do, I believe that you
 18 indicated that there could not be
 19 questioning as it relates to
 20 individual companies. And I think
 21 it's clearly stated in the
 22 response to one of the topics,
 23 either 2 or 3, I believe.
 24 MR. FARRELL: I'll tell you

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1 that -- where I asked you generally which
 2 registrants we are talking about.
 3 And I'm going to go and give
 4 you more specific information.
 5 So the last question that
 6 was pending and answered, I asked: "Was
 7 the DEA in fact frustrated that
 8 registrants were blatantly violating the
 9 MOUs from prior administrative actions?"
 10 And your answer was: "Yes."
 11 There were appropriate
 12 objections that were made that will be
 13 resolved one day in the future. So
 14 here's where my follow-up questions
 15 comes.
 16 A. Okay.
 17 Q. Does that include Cardinal
 18 Health's 2008 MOU and settlement which
 19 resulted in a second DEA fine?
 20 A. Yes.
 21 MS. MAINIGI: Objection.
 22 Objection. Scope. Objection.
 23 Form. Let me just go ahead and
 24 begin at least noting, and then

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1 what. It's ten till 12:00. If
 2 it's okay with the DOJ, why don't
 3 we take a lunch break now, and we
 4 can argue about this during lunch.
 5 MR. FINKELSTEIN: Sure.
 6 THE VIDEOGRAPHER: 11:53, we
 7 are off the video record.
 8 - - -
 9 (Lunch break.)
 10 - - -
 11 A. F T E R N O O N S E S S I O N
 12 - - -
 13 THE VIDEOGRAPHER: 1:09. We
 14 are on the video record.
 15 - - -
 16 EXAMINATION
 17 (Continued)
 18 - - -
 19 BY MR. FARRELL:
 20 Q. Mr. Prevoznik, when we took
 21 our lunch break, the last question and
 22 answer was followed by a bunch of
 23 objections. And so what I'm going to do
 24 is I'm going to withdraw the question

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1 someone else may continue, the
 2 fact that there was a discussion
 3 off the record during the lunch
 4 break between us, DOJ, as well as
 5 the plaintiffs about the scope of
 6 what DOJ has allowed. I don't
 7 think that there was resolution of
 8 that, but for the record,
 9 defendants do object to this
 10 ongoing line of questioning which
 11 involves discussion of individual
 12 defendants or individual actions
 13 that have been taken in the past
 14 against defendants.
 15 MR. EPPICH: And for the
 16 record, McKesson further objects
 17 to the scope of this as really
 18 outside the Touhy request. You
 19 know, the defendants are -- see
 20 this as seeking non-public
 21 information, information on
 22 ongoing investigations,
 23 investigation that may implicate
 24 the deliberative process or to the

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1 specific activities of the DEA.
 2 The defendants have not been
 3 permitted to question into these
 4 lines with other witnesses or
 5 yesterday, and the defendants
 6 simply are requesting equality in
 7 the application of the Touhy. And
 8 that will be our objection on the
 9 record.
 10 MR. FINKELSTEIN: To be as
 11 clear as I possibly can about the
 12 scope of the authorization in the
 13 hope that we don't have to keep
 14 having this conversation, what we
 15 have authorized is information
 16 regarding administrative actions
 17 and/or settlements that the DEA
 18 has entered into with the
 19 defendants in this case.
 20 What we have not authorized
 21 is information regarding
 22 investigations that haven't
 23 resulted in settlements, or
 24 investigative techniques, or for

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1 A. Yes.
 2 Q. Acting Administrator Robert
 3 Patterson testified that the DEA has
 4 1,500 people to monitor 1.73 million
 5 registrants. Is that an accurate number?
 6 MR. EPPICH: Objection to
 7 form. Vague.
 8 THE WITNESS: Yes.
 9 (Whereupon, a discussion was
 10 held off the record.)
 11 THE VIDEOGRAPHER: 1:14, we
 12 are off the video record.
 13 (Brief pause.)
 14 THE VIDEOGRAPHER: 1:17. We
 15 are on the video record.
 16 BY MR. FARRELL:
 17 Q. Again, the last reference
 18 that I'm going to bring up with regard to
 19 Mr. Patterson's testimony before Congress
 20 on behalf of the DEA, is a segment that
 21 again talks about the shortcomings in the
 22 use of the ARCOS data historically.
 23 MR. FARRELL: Would you
 24 please play that clip.

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1 that matter deliberative process
 2 or law enforcement sensitive
 3 information.
 4 I will continue to make
 5 appropriate objections, and where
 6 appropriate instruct the witness
 7 not to answer. The defendants
 8 have made their objections and
 9 have preserved them for the
 10 record.
 11 You can answer.
 12 BY MR. FARRELL:
 13 Q. Does that include McKesson's
 14 2008 MOU and settlement which resulted in
 15 a second DEA fine?
 16 MR. EPPICH: Objection.
 17 Scope.
 18 THE WITNESS: Yes.
 19 BY MR. FARRELL:
 20 Q. I'm not going to play this
 21 video clip. Instead I'm going to ask it
 22 in a form of a question.
 23 During the same testimony
 24 acting -- is it administrator?

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1 (Video clip played as
 2 follows:)
 3 MR. PATTERSON: So the key
 4 is for us to work together on
 5 that, and again, I can say
 6 repeatedly in 2008, '9, '10, we
 7 did not use this data in the way
 8 that we are now using it. And I
 9 think that's the key.
 10 I get that we have this
 11 issue from a decade ago that we
 12 have to resolve, you know, in
 13 terms of how we use it. And
 14 again, where we fell short in
 15 that, we'll take responsibility
 16 for it.
 17 (Video playback ended.)
 18 BY MR. FARRELL:
 19 Q. So has the DEA, in fact,
 20 changed the way in which they are using
 21 the ARCOS data?
 22 A. Yes.
 23 Q. And to be clear, to be
 24 clear, what we are talking about is the

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1 DEA's use of the ARCOS data to
 2 retrospectively identify and prosecute
 3 criminals?
 4 MR. EPPICH: Object to form.
 5 THE WITNESS: Yes.
 6 BY MR. FARRELL:
 7 Q. I apologize that I'm going
 8 to jump out of order. There is a system
 9 to my madness.
 10 What I'm going to do is, I
 11 I'm going to hit one particular subject
 12 here, and then I'm going to go back
 13 and -- and ask some questions as if, you
 14 know, a priority from the beginning.
 15 A. Okay.
 16 Q. So my question is this. I
 17 want to -- I want to ask you if the DEA
 18 agrees with the following statement from
 19 Cardinal Health:
 20 "Cardinal Health's policy
 21 about which it informed DEA as early as
 22 2009, was that if a customer's order
 23 could not be filled because it was
 24 suspicious, Cardinal Health would

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1 wholesale distributor gets a flag of a
 2 suspicious order, that they've determined
 3 to be a suspicious order, and that they
 4 block that shipment, that they should
 5 terminate all future sales to that same
 6 customer until they can rule out that
 7 diversion is occurring?
 8 MS. MAINIGI: Objection.
 9 Form. Objection. Scope. Calls
 10 for a hypothetical.
 11 MR. EPPICH: Objection to
 12 the foundation. Calls for
 13 speculation.
 14 THE WITNESS: Yes, I would
 15 agree.
 16 BY MR. FARRELL:
 17 Q. The same thing applies to a
 18 document involving McKesson.
 19 On August 13, 2014, the
 20 United States Department of Justice was
 21 communicating with the lawyer for
 22 McKesson which ended up resulting in a
 23 \$150 million fine.
 24 And in this discussion, the

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1 terminate controlled substance sales to
 2 the customer and report the termination
 3 to the DEA."
 4 Do you understand what I
 5 just read to you?
 6 MS. MAINIGI: Objection.
 7 Form. Objection. Scope.
 8 THE WITNESS: Can I get the
 9 first -- the first part of the
 10 question?
 11 BY MR. FARRELL:
 12 Q. Yes. So specifically what
 13 I'm referencing is Cardinal Health's
 14 reply brief, in Cardinal Health versus
 15 Eric Holder, which was a preliminary
 16 injunction filed by Cardinal Health in a
 17 DC District Court. And in it -- in the
 18 reply brief there's a provision in here
 19 that I read to you. And in essence what
 20 it says is that if you get a suspicious
 21 order, and you block it, that Cardinal
 22 Health would terminate that customer and
 23 not sell to it anymore.
 24 Do you agree that if a

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1 DEA notes, and I'm reading from Bates
 2 Stamp MCKMDL 00409224, that the McKesson
 3 operations manual says the following
 4 quote:
 5 "Once McKesson deems an
 6 order and/or a customer suspicious,
 7 McKesson is required to act. This means
 8 all controlled substance sales to that
 9 customer must cease and the DEA must be
 10 notified."
 11 Does the DEA agree with
 12 those duties?
 13 A. Yes.
 14 MR. EPPICH: Objection.
 15 Scope. Objection to the extent it
 16 mischaracterizes the document.
 17 Lacks foundation. Calls for
 18 speculation. Form.
 19 MR. FINKELSTEIN: The
 20 witness has answered the question.
 21 I just note that there are
 22 no documents in front of him.
 23 There are no exhibits. If you're
 24 going to ask him about exhibits,

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1 then you should mark them as
 2 exhibits.
 3 MR. FARRELL: I can
 4 absolutely do that. And -- and I
 5 think that I was trying to save us
 6 some time. To the extent that
 7 I've misread anything or the
 8 context of it, I apologize.
 9 We have those documents and
 10 I can circulate them. I'm just
 11 trying to create a quick record
 12 before we move on.
 13 MR. FINKELSTEIN: It's your
 14 deposition.
 15 MR. EPPICH: We'll have an
 16 ongoing objection then, to the
 17 extent you're reading from a
 18 document that's not in front of us
 19 to check, and -- and where you
 20 haven't established a foundation,
 21 then we will obviously object.
 22 MR. FARRELL: So if it's --
 23 if it's not clear, I'm trying to
 24 create a record for our experts as

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1 legal conclusion.
 2 THE WITNESS: Yes.
 3 BY MR. FARRELL:
 4 Q. The foundation of our
 5 democracy arises out of the U.S. code.
 6 So I'm going to ask a couple of general
 7 questions about some code provisions that
 8 I'm sure you're very familiar with.
 9 MS. MAINIGI: Objection.
 10 Outside the scope.
 11 BY MR. FARRELL:
 12 Q. The first one is the statute
 13 of United States Code Section 801. And I
 14 ask for it to be shown on the screen.
 15 So you've been asked in the
 16 past, with the focus on Subparagraph 1,
 17 that many of the controlled substances
 18 that are distributed in America,
 19 prescribed and dispensed, have a useful
 20 and legitimate medical purpose and that
 21 they are necessary to maintain the health
 22 and general welfare of the American
 23 people.
 24 That's a true statement, is

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1 well.
 2 MR. EPPICH: I got that,
 3 thank you.
 4 BY MR. FARRELL:
 5 Q. So, cleaning up a couple of
 6 other things.
 7 There was some testimony
 8 yesterday, or today actually, from my
 9 learned colleague, that 1.2 million
 10 suspicious orders were reported to the
 11 DEA between 2007 and 2018.
 12 Do you recall that
 13 testimony?
 14 A. Yes.
 15 MR. EPPICH: Object to form.
 16 BY MR. FARRELL:
 17 Q. If those suspicious orders
 18 were filled, is that a, per se, violation
 19 of federal law?
 20 MR. EPPICH: Objection to
 21 form.
 22 THE WITNESS: Yes.
 23 MS. MAINIGI: Objection.
 24 Calls for speculation, calls for a

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1 it not?
 2 MS. MAINIGI: Objection.
 3 Form.
 4 MR. FINKELSTEIN: Same scope
 5 objection. I allowed the
 6 defendants to ask so I'll allow
 7 you to ask.
 8 BY MR. FARRELL:
 9 Q. So we're going to skip down
 10 to the part they omitted, which is
 11 Subparagraph 2, and I'd ask for you to
 12 read that into the record.
 13 MR. EPPICH: Object to form.
 14 THE WITNESS: "The illegal
 15 importation, manufacture,
 16 distribution and possession and
 17 improper use of controlled
 18 substances have a substantial and
 19 detrimental effect on the health
 20 and general welfare of the
 21 American people."
 22 BY MR. FARRELL:
 23 Q. Is this consistent with the
 24 guidance provided by the DEA to

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1 registrants?
 2 MR. EPPICH: Object to form.
 3 Vague.
 4 THE WITNESS: Yes.
 5 BY MR. FARRELL:
 6 Q. The next provision is
 7 Section 812. And this is the scheduling
 8 of -- by the United States Congress,
 9 which identifies Schedule II drugs, which
 10 include prescription opioids.
 11 And Subparagraph A, would
 12 you please read into the record?
 13 A. "The drug or other substance
 14 has" -- "has a high potential for abuse."
 15 Q. Subparagraph B?
 16 A. "The drug or other substance
 17 has a currently accepted medical use and
 18 treatment in the United States or a
 19 currently accepted medical use with
 20 severe restrictions."
 21 Q. And Paragraph C?
 22 A. "Abuse of the drug or other
 23 substances may lead to severe
 24 psychological or physical dependence."

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1 And it includes a duty imposed upon the
 2 registrants to comply with Paragraph 1.
 3 Will you please read that into the
 4 record?
 5 A. "Maintenance of effective
 6 control against diversion of particular
 7 controlled substances into other than
 8 legitimate medical, scientific, and
 9 industrial channels."
 10 Q. And is this consistent with
 11 the guidance provided by the DEA to
 12 registrants?
 13 MR. EPPICH: Objection to
 14 form. Vague.
 15 THE WITNESS: Yes. Yes.
 16 BY MR. FARRELL:
 17 Q. Now, the next thing that I'm
 18 going to do is to peer a little bit
 19 deeper into some congressional intent
 20 from the congressional record.
 21 MR. FARRELL: Can you pull
 22 up the next slide.
 23 BY MR. FARRELL:
 24 Q. I'm not going to ask you to

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1 Q. And are these provisions
 2 consistent with the guidance provided by
 3 the DEA to registrants?
 4 MR. EPPICH: Objection to
 5 form. Vague.
 6 THE WITNESS: Yes.
 7 BY MR. FARRELL:
 8 Q. Go to the next section which
 9 is Section 821. This is the enabling
 10 statute from the United States Congress
 11 that authorizes the Attorney General to
 12 promulgate regulations regarding
 13 prescription opioids.
 14 Has, in fact, the DEA used
 15 this authority to enact, in particular,
 16 21 C.F.R. 1301.74?
 17 MR. FINKELSTEIN: Calls for
 18 a legal conclusion. You can
 19 answer.
 20 THE WITNESS: Yes.
 21 BY MR. FARRELL:
 22 Q. Go to the next slide. And
 23 this is the United States Code Section,
 24 which has a registration requirement.

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1 be a legal scholar or an academic
 2 scholar. I'm going to ask you some
 3 specific questions.
 4 This comes from the
 5 congressional record from the 1970
 6 Controlled Substances Act.
 7 MR. FARRELL: And so if
 8 you'll go to the next slide.
 9 BY MR. FARRELL:
 10 Q. Title II, Control
 11 Enforcement, states, "This bill provides
 12 for control by the Justice Department of
 13 problems related to drug abuse through
 14 registration of manufacturers,
 15 wholesalers, retailers, and all others in
 16 the legitimate distribution chain, and
 17 makes transactions outside the legitimate
 18 distribution chain illegal."
 19 Is this consistent with the
 20 guidance the DEA provided to registrants?
 21 MS. MAINIGI: Objection.
 22 MR. EPPICH: Objection to
 23 form.
 24 THE WITNESS: Yes.

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1 BY MR. FARRELL:
 2 Q. If you violate Section 823,
 3 or the provisions, the regulations
 4 enacted by the DEA related to the
 5 distribution of controlled substances,
 6 those acts are illegal. Agreed or
 7 disagree?
 8 MS. MAINIGI: Objection.
 9 Calls for a legal conclusion.
 10 THE WITNESS: Agreed.
 11 BY MR. FARRELL:
 12 Q. The DEA considers violation
 13 of federal law related to the
 14 distribution of controlled substances as
 15 illegal and unlawful?
 16 MR. EPPICH: Objection to
 17 form.
 18 THE WITNESS: Yes.
 19 MR. FARRELL: Go to the next
 20 slide.
 21 BY MR. FARRELL:
 22 Q. The quote from the
 23 congressional record is, "The bill is
 24 designed to improve the administration

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1 A. Yes.
 2 MR. EPPICH: Object to form.
 3 BY MR. FARRELL:
 4 Q. And your answer was, "No,
 5 not every suspicious order results in
 6 diversion. That's my recollection."
 7 I would like to ask you some
 8 corollary to that if you don't mind.
 9 MS. MAINIGI: Objection.
 10 THE WITNESS: Okay.
 11 BY MR. FARRELL:
 12 Q. You would agree with me --
 13 strike that.
 14 Does the DEA take the
 15 position that the purpose of the
 16 Controlled Substances Act and its federal
 17 regulations is to prevent diversion?
 18 A. Yes.
 19 Q. And diversion is foreseeable
 20 if registrants fail to comply with
 21 federal law?
 22 MS. MAINIGI: Object.
 23 MR. EPPICH: Object to form.
 24 MR. FINKELSTEIN: Vague.

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1 and regulation by the manufacturer" --
 2 "by the manufacturing, distribution and
 3 dispensing of controlled substances by
 4 providing a quote-unquote closed system
 5 of drug distribution for legitimate
 6 handlers of such drugs.
 7 "Such a closed system should
 8 significantly reduce the widespread
 9 diversion of these drugs out of
 10 legitimate channels into the illicit
 11 market, while at the same time providing
 12 the legitimate drug industry with a
 13 unified approach to narcotic and
 14 dangerous drug control."
 15 Is this consistent with the
 16 guidance provided by the DEA to
 17 registrants?
 18 MR. EPPICH: Object to form.
 19 Vague.
 20 THE WITNESS: Yes.
 21 BY MR. FARRELL:
 22 Q. You were asked previously
 23 whether every suspicious order results in
 24 diversion. Do you recall that testimony?

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1 MR. O'CONNOR: Object.
 2 BY MR. FARRELL:
 3 Q. Does the DEA agree that
 4 diversion is foreseeable if registrants
 5 fail to comply with federal law?
 6 MS. MAINIGI: Objection.
 7 MR. EPPICH: Objection.
 8 Form. Calls for a legal
 9 conclusion. Vague.
 10 THE WITNESS: Correct.
 11 BY MR. FARRELL:
 12 Q. And failure to comply
 13 enables more diversion. Does the DEA
 14 agree with that?
 15 MR. O'CONNOR: Object to
 16 form.
 17 MR. EPPICH: Objection.
 18 MR. STEPHENS: Objection.
 19 MR. NICHOLAS: Objection.
 20 MS. MAINIGI: Objection.
 21 MR. EPPICH: Calls for a
 22 legal conclusion.
 23 MR. FINKELSTEIN: Join as to
 24 vagueness.

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1 THE WITNESS: Yes.
 2 BY MR. FARRELL:
 3 Q. Does the DEA believe that
 4 more diversion is detrimental to public
 5 health and safety?
 6 MR. O'CONNOR: Object to
 7 form. Scope.
 8 THE WITNESS: Yes.
 9 BY MR. FARRELL:
 10 Q. Does the DEA agree that the
 11 more pills which unlawfully enter the
 12 market results in more diversion?
 13 MR. O'CONNOR: Objection to
 14 form. Scope.
 15 THE WITNESS: Yes.
 16 MR. FARRELL: Go to the next
 17 slide.
 18 BY MR. FARRELL:
 19 Q. This is a provision about
 20 penalties. Does the DEA agree that the
 21 price for participation in illegal
 22 traffic of controlled substances should
 23 be prohibitive?
 24 MR. O'CONNOR: Objection.

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1 Ill of the bill deal with law enforcement
 2 and aspects of drug abuse and provide
 3 authority for the Department of Justice
 4 to keep track of all drugs subject to
 5 abuse manufactured or distributed in the
 6 United States in order to prevent
 7 diversion of these drugs from legitimate
 8 channels of commerce.
 9 Is this consistent with the
 10 guidance provided by DEA to registrants?
 11 MR. EPPICH: Objection to
 12 form. Vague.
 13 MR. O'CONNOR: Objection.
 14 Scope.
 15 THE WITNESS: Yes.
 16 MR. FARRELL: Next slide,
 17 please.
 18 Next slide.
 19 BY MR. FARRELL:
 20 Q. Congress found the illegal
 21 importation, manufacture, distribution
 22 and possession of improper use of
 23 controlled substances have a substantial
 24 detrimental effect on the public's health

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1 MR. EPPICH: Objection to
 2 form, foundation.
 3 MR. STEPHENS: Objection.
 4 MR. NICHOLAS: Objection.
 5 MS. MAINIGI: Objection.
 6 MR. O'CONNOR: Scope.
 7 MR. EPPICH: Calls for
 8 speculation.
 9 MR. FINKELSTEIN: Scope.
 10 You can answer.
 11 THE WITNESS: Yes.
 12 BY MR. FARRELL:
 13 Q. Is this one of the reasons
 14 that the DEA has escalated the amount of
 15 fines that it has levied against
 16 registrants that are repeated violators?
 17 MR. O'CONNOR: Objection.
 18 Leading.
 19 MR. EPPICH: Objection to
 20 form. Calls for speculation.
 21 MR. FINKELSTEIN: Scope.
 22 THE WITNESS: Yes.
 23 BY MR. FARRELL:
 24 Q. Next slide. Titles II and

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1 and general welfare.
 2 Does the DEA agree with this
 3 statement, and is this consistent with
 4 the guidance provided by the DEA to
 5 registrants?
 6 MR. O'CONNOR: Objection to
 7 form and to scope.
 8 MR. EPPICH: Objection to
 9 the extent it misstates the
 10 document.
 11 BY MR. FARRELL: Very well.
 12 That's a good point. I'll back
 13 up.
 14 BY MR. FARRELL:
 15 Q. In the congressional record
 16 is the following statement:
 17 "The illegal importation,
 18 manufacture, distribution and possession
 19 and improper use of controlled substances
 20 have a substantial detrimental effect on
 21 the public's health and general welfare."
 22 Does the DEA agree with this
 23 statement?
 24 MR. O'CONNOR: Objection to

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1 form and scope.
 2 MR. EPPICH: Objection.
 3 Calls for speculation.
 4 MR. FINKELSTEIN: Scope.
 5 THE WITNESS: Yes.
 6 BY MR. FARRELL:
 7 Q. Is this statement consistent
 8 with the guidance provided by the DEA to
 9 registrants?
 10 MR. O'CONNOR: Objection to
 11 form and scope.
 12 MR. EPPICH: Objection.
 13 Vague.
 14 THE WITNESS: Yes.
 15 MR. FARRELL: Next slide
 16 please.
 17 There's no more?
 18 BY MR. FARRELL:
 19 Q. All right. Now we're going
 20 to dig a little bit deeper. These aren't
 21 the congressional record. This comes
 22 from the hearing involving the 1970
 23 Controlled Substances Act.
 24 So, if you go to the front

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1 MR. FARRELL: Sure.
 2 MR. NICHOLAS: I don't want
 3 to mess with your flow here, but
 4 you're showing these documents
 5 that are not -- they are not --
 6 they are not being offered as
 7 evidence. They are not being
 8 marked.
 9 It's a direct examination.
 10 I kind of feel like there needs to
 11 be a little more formality to the
 12 presentation. Like, you know,
 13 these have to be exhibits or
 14 something, right?
 15 MR. FARRELL: Noted.
 16 MR. NICHOLAS: So that's my
 17 objection. I don't think you
 18 should be able to proceed in this
 19 manner without sort of producing
 20 these things as exhibits or laying
 21 a foundation for these documents.
 22 MR. FARRELL: I will note we
 23 spent most of the morning doing
 24 the exact same thing with other

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1 page, this is a 900-page document that --
 2 from the -- I always mispronounce this.
 3 The HathiTrust? HathiTrust?
 4 And it contains all of the
 5 hearings that are -- that surrounded the
 6 enactment of the 1970 Controlled
 7 Substances Act. And there's some
 8 particular statements that are made. I'm
 9 not going to ask you to verify them. I'm
 10 going to just ask whether the DEA agrees
 11 or disagrees with the premise.
 12 The first one comes from a
 13 statement of the manager of -- of
 14 distribution from a firm called Smith,
 15 Kline & French Laboratories.
 16 If you --
 17 MR. NICHOLAS: I'll
 18 object -- I'm sorry. I don't want
 19 to interrupt. If you're not done,
 20 keep going.
 21 MR. FARRELL: So if you'll
 22 go ahead and pull it up.
 23 MR. NICHOLAS: Okay. Can I
 24 just interpose an objection?

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1 aspects of the congressional
 2 record.
 3 MR. NICHOLAS: This is a
 4 direct examination.
 5 MR. FARRELL: Understood.
 6 So -- can we stipulate to that?
 7 MR. NICHOLAS: I mean, it's
 8 your position that it's a direct,
 9 right?
 10 BY MR. FARRELL:
 11 Q. All right. So if we go to
 12 Page 269, I'm going to read to you this
 13 statement:
 14 "We cannot overemphasize,
 15 however, that no regulatory program will
 16 work unless it is backed by sufficient
 17 manpower and resources to do what it is
 18 designed to do. The federal and state
 19 enforcement agencies in the drug field
 20 are all too well aware of this truism.
 21 They are often the target for unjustified
 22 public criticism for not doing a job that
 23 would take many times their present
 24 resources to do."

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1 The D --
 2 MS. MAINIGI: Go ahead.
 3 BY MR. FARRELL:
 4 Q. Does the DEA agree with this
 5 statement?
 6 MS. MAINIGI: Objection to
 7 form, scope.
 8 And can we see a copy of
 9 this, Counsel? Because we have no
 10 way to know what exactly you are
 11 reading from within this document.
 12 MR. FULLER: Here you go.
 13 MS. MAINIGI: What page?
 14 MR. FARRELL: 269.
 15 Go to the next slide,
 16 please.
 17 MR. EPPICH: I'll object to
 18 foundation.
 19 BY MR. FARRELL:
 20 Q. Go to the next slide,
 21 please.
 22 This is a statement from the
 23 Washington representative for the
 24 National Association of Retail Druggists.

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1 response is:
 2 "I don't believe there are
 3 either. I think this is a factor and I
 4 can certainly appreciate your concern. I
 5 think, Mr. Chairman, that you put your
 6 finger on the real problem that has to be
 7 dealt with."
 8 So my question to the DEA:
 9 Is this consistent with the DEA's
 10 understanding of the purpose and effect
 11 of the Controlled Substances Act, as well
 12 as the regulations enabled thereunder, is
 13 to prevent diversion that happens in the
 14 entire chain of distribution?
 15 MR. EPPICH: Object to form.
 16 MR. O'CONNOR: And scope.
 17 MS. MAINIGI: Objection.
 18 Outside the scope as well.
 19 MR. NICHOLAS: Can we -- can
 20 we know the date of this
 21 statement, when it was made?
 22 MS. MAINIGI: It is in 1970
 23 prior to opioids that are at issue
 24 here.

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1 "MR. ROGERS. As we ask
 2 groups as they come in where they feel
 3 diversion comes from or illegal traffic,
 4 when you get to the manufacturers, they
 5 don't feel that" -- "that any comes from
 6 there.
 7 "Then we get to the
 8 wholesaler, and they don't think there is
 9 any there. And then we get down to the
 10 doctors and they tell us it is not in
 11 that segment, and the retail druggist now
 12 tells us there is none there. Well,
 13 where do you feel all of this comes from?
 14 We have 900 agents supposedly to track
 15 all of this down and they come up with
 16 4,000 arrests, five per man for the year.
 17 I don't know how society gets inundated
 18 with all of these drugs from no sources.
 19 Where do you think it mainly comes from?
 20 I don't believe there are enough
 21 robberies out of warehouses to supply all
 22 of this."
 23 And then from the National
 24 Association of Retail Druggists, their

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1 MR. NICHOLAS: Is that
 2 correct, it's a pre-1970
 3 statement?
 4 MR. FINKELSTEIN: Are you
 5 guys done with objections?
 6 MS. MAINIGI: Well, it says
 7 1970.
 8 Paul, could you clarify
 9 though. Is it 1970?
 10 MR. FARRELL: I've already
 11 made the record that I'm going to
 12 make.
 13 MR. FINKELSTEIN: Once you
 14 are done -- are you guys done?
 15 MR. NICHOLAS: Yeah.
 16 MR. FINKELSTEIN: I object
 17 to the scope. Vague.
 18 You can answer if you
 19 understand.
 20 THE WITNESS: Yes.
 21 BY MR. FARRELL:
 22 Q. Even if it's not admissible,
 23 you agree with me that's pretty
 24 consistent with what the DEA hears today

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1 from those in the chain of distribution.
 2 MR. EPPICH: Object to form.
 3 MR. O'CONNOR: And scope.
 4 THE WITNESS: Could you
 5 repeat the question?
 6 BY MR. FARRELL:
 7 Q. Even if this is from 1970,
 8 are those sentiments that we just read
 9 consistent with what the DEA presently
 10 hears from the manufacturers,
 11 distributors, doctors, and pharmacies in
 12 the chain of distribution?
 13 MR. STEPHENS: Object to
 14 form.
 15 MR. FINKELSTEIN: Vague.
 16 MR. O'CONNOR: Object to
 17 scope.
 18 THE WITNESS: Yes.
 19 BY MR. FARRELL:
 20 Q. All right. The next thing
 21 we're going to go to is the C.F.R. that
 22 Congress enabled to be adopted. And the
 23 first thing is going to be from March 13,
 24 1971 and it's the rule proposal. And

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1 you read that.
 2 A. "Many manufacturers and
 3 distributors objected to security
 4 controls set forth in 301.91 to 301.97."
 5 Q. And I'll represent to you
 6 that these provisions they are
 7 referencing are in fact the security
 8 requirements in 1301.74(b). And I'll ask
 9 the DEA: Do you still have records of
 10 the objections lodged by manufacturers
 11 and distributors to this regulatory
 12 provision?
 13 MR. EPPICH: Objection to
 14 form.
 15 MS. MAINIGI: Objection to
 16 form, foundation, scope.
 17 MR. EPPICH: Object to
 18 scope. This is way outside of
 19 Topic 1 of plaintiffs' topics.
 20 MR. FINKELSTEIN: Scope.
 21 You can answer.
 22 BY MR. FARRELL:
 23 Q. If you know.
 24 A. I don't know.

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1 we're going to flip down to Page 9.
 2 Does the DEA recognize the
 3 structure of this provision?
 4 A. Yes.
 5 MS. MAINIGI: Objection.
 6 Foundation. Scope. Form.
 7 MR. FARRELL: Well, the
 8 foundation of this exhibit is this
 9 is part of the rulemaking process
 10 which resulted in the adoption of
 11 21 C.F.R. 1301.74.
 12 MS. MAINIGI: I don't think
 13 you can testify, Mr. Farrell. You
 14 have to establish foundation in
 15 other ways.
 16 BY MR. FARRELL:
 17 Q. The next slide I'm going to
 18 show you comes from once public notice
 19 was made for this provision.
 20 MR. FARRELL: Will you
 21 please show that.
 22 BY MR. FARRELL:
 23 Q. It comes from April 24,
 24 1971. At the very top of it, I'll have

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1 Q. Is it something that DEA can
 2 look into for me?
 3 MR. EPPICH: Same
 4 objections.
 5 MS. MAINIGI: Objection.
 6 THE WITNESS: Yes.
 7 BY MR. FARRELL:
 8 Q. Because it would be swell
 9 if, like, some of the manufacturers and
 10 distributors that are here objecting to
 11 the DEA have been objecting since 1971.
 12 MS. MAINIGI: Is that a
 13 question?
 14 MR. EPPICH: Objection to
 15 the characterization.
 16 MR. FARRELL: That was just
 17 commentary.
 18 MR. EPPICH: I know.
 19 BY MR. FARRELL:
 20 Q. The next slide is going to
 21 be the actual regulation that exists
 22 today, which is 21 C.F.R. 1301.74(b).
 23 MR. FINKELSTEIN: That's not
 24 it.

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1 MR. STEPHENS: Paul, just
 2 for clarification, are you marking
 3 these so that we have a hard copy
 4 that we can use in redirect?
 5 You're just throwing stuff up on
 6 the screen and playing stuff and
 7 moving on.
 8 MS. MAINIGI: And sometimes
 9 not even waiting for an answer.
 10 MR. FARRELL: Understood.
 11 MR. STEPHENS: Do you
 12 understand my point? If you're
 13 using a document, I want to see
 14 the whole document so if I've got
 15 questions that I can use it in
 16 redirect.
 17 MR. FARRELL: We do have
 18 copies. You've got copies of
 19 stuff here too. Yeah, we got
 20 copies.
 21 MS. MAINIGI: I thought you
 22 were sending these all
 23 electronically.
 24 MR. FARRELL: I think you

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1 registrant suspicious orders of
 2 controlled substances. The registrant
 3 shall inform the field division office of
 4 the administration in his area of
 5 suspicious orders when discovered by the
 6 registrant.
 7 "Suspicious orders include
 8 orders of unusual size, orders deviating
 9 substantially from a normal pattern, and
 10 orders of unusual frequency."
 11 Q. Is this consistent with the
 12 guidance provided by the DEA to
 13 registrants?
 14 A. Yes.
 15 Q. And has this regulation
 16 materially changed since it was
 17 originally enacted in 1971?
 18 A. No.
 19 Q. All right. The next
 20 document that I'm going to show you comes
 21 from discovery in this case. And it's
 22 the NWDA suspicious order monitoring
 23 system.
 24 And I believe that the

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1 scoffed at me when I made that
 2 recommendation.
 3 MS. MAINIGI: I did laugh at
 4 you. That's true. But I thought
 5 you were still doing it.
 6 MR. FARRELL: We'll move on.
 7 BY MR. FARRELL:
 8 Q. I've shown you up on the
 9 screen, which is a verbatim copy of --
 10 from the regulations enacted.
 11 Does the DEA recognize and
 12 acknowledge that 21 C.F.R. 1301.74 is a
 13 regulation enacted and under its
 14 authority?
 15 MS. MAINIGI: Objection.
 16 MR. EPPICH: Objection.
 17 MR. FINKELSTEIN: Calls for
 18 a legal conclusion.
 19 THE WITNESS: Yes.
 20 BY MR. FARRELL:
 21 Q. And would you please read
 22 subparagraph (b) into the record?
 23 A. "The registrant shall design
 24 and operate a system to disclose to the

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1 government has it included in its folder,
 2 its materials file.
 3 Have you seen this document
 4 before?
 5 A. Can I see more than that?
 6 Q. I think it's under -- it's
 7 in one --
 8 A. In my tabs, my folder?
 9 Q. Yeah.
 10 A. Yes.
 11 Q. I'll give you a second if
 12 you want to flip through it.
 13 A. That's all I see.
 14 I'm familiar with this.
 15 Q. This is a document that was
 16 in the files of Cardinal Health. And
 17 it's stamped as received in 1993, but
 18 I'll represent to you that it contains
 19 some older 1984 references later on.
 20 I'm going just to ask you a
 21 few basic questions about it. And I'll
 22 represent to you that the NWDA is a trade
 23 group for the wholesale distributors at
 24 some point in time.

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1 Go to Page 3.
 2 MR. FARRELL: Take that down
 3 first if you don't mind. I'm
 4 sorry. I was talking to John.
 5 Take out the blowup.
 6 Go ahead. Put it back up.
 7 BY MR. FARRELL:
 8 Q. So this is something very
 9 specific that I want to ask the DEA.
 10 MS. MAINIGI: Objection.
 11 Let me object first to the manner
 12 in which you're questioning. You
 13 cannot be testifying about various
 14 aspects of this document.
 15 But objection. Form.
 16 Foundation. This guy hasn't --
 17 this is not a DEA document.
 18 You're essentially trying to use
 19 him as a vehicle to get testimony
 20 from the document itself. It's
 21 ridiculous and objectionable and
 22 outside the scope.
 23 MR. FARRELL: You can make
 24 your objections without making

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1 Form. Scope. Foundation.
 2 THE WITNESS: Yes.
 3 BY MR. FARRELL:
 4 Q. Okay. Cardinal Health has
 5 represented that the DEA provided that
 6 factor to them for controlled substances.
 7 Is the DEA aware of ever providing the
 8 factor for the current month ingredient
 9 limit to anybody in industry?
 10 MS. MAINIGI: Objection.
 11 Form. Scope. Foundation.
 12 THE WITNESS: I don't know.
 13 BY MR. FARRELL:
 14 Q. Go all the way to Page 7.
 15 In the middle of the page in Paragraph 9,
 16 "Single suspicious orders." For purposes
 17 of context I'd like you to read this
 18 aloud.
 19 MS. MAINIGI: Objection to
 20 form, scope, foundation.
 21 **THE WITNESS: "Single orders**
 22 **of unusual size or deviation must**
 23 **be reported immediately. The**
 24 **submission of a monthly printout**

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1 demeaning comments. So I'm going
 2 to ask you --
 3 MS. MAINIGI: Okay. Well,
 4 it is a mockery of the process.
 5 MR. FARRELL: That's your
 6 second demeaning comment. The
 7 third one, we'll get the special
 8 master on the phone.
 9 MS. MAINIGI: That's fine.
 10 I actually would love that. Go
 11 ahead.
 12 MR. FARRELL: We can do it
 13 on a break after we get through
 14 this document.
 15 MS. MAINIGI: Sounds fine to
 16 me.
 17 BY MR. FARRELL:
 18 Q. So what I'm going to ask you
 19 is, if you look in the middle of the page
 20 where it says, "Current month ingredient
 21 limit," and then there's a note that says
 22 "NN.NN will be provided by the DEA."
 23 Do you see that?
 24 MS. MAINIGI: Objection.

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1 **of after-the-fact sales will not**
 2 **relieve a registrant from the**
 3 **responsibility of reporting these**
 4 **single excessive or suspicious**
 5 **orders.**
 6 **"DEA has interpreted orders**
 7 **to mean prior to shipment."**
 8 **BY MR. FARRELL:**
 9 **Q. Is this statement consistent**
 10 **with the guidance provided by the DEA to**
 11 **registrants?**
 12 **A. Yes.**
 13 MR. O'CONNOR: Objection.
 14 MR. EPPICH: Objection.
 15 MR. STEPHENS: Objection.
 16 MR. NICHOLAS: Objection.
 17 MS. MAINIGI: Objection.
 18 Form.
 19 MR. EPPICH: Foundation,
 20 form, calls for speculation.
 21 BY MR. FARRELL:
 22 **Q. I'm not asking you to**
 23 **speculate. As a matter of fact, is this**
 24 **consistent with what the DEA has told its**

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1 registrants is required to comply with
 2 federal law?
 3 MS. MAINIGI: Objection.
 4 MR. EPPICH: Objection.
 5 Form. Foundation. Calls for
 6 speculation. Vague as to time.
 7 MR. FINKELSTEIN: I'll join
 8 the objection as to the vagueness
 9 as to time.
 10 THE WITNESS: Yes.
 11 BY MR. FARRELL:
 12 Q. Is the DEA aware of ever in
 13 its history of saying anything
 14 inconsistent with what you just read?
 15 MR. EPPICH: Objection.
 16 Form, foundation, calls for
 17 speculation, outside the scope.
 18 THE WITNESS: I have --
 19 could you -- could you re-read it?
 20 BY MR. FARRELL:
 21 Q. I'll strike it. I got the
 22 answer. I'll strike it.
 23 The next thing I'm going to
 24 do is I'm going to show you from Page 8,

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1 Q. When you look at the
 2 reliance materials that you have in front
 3 of you, you can flip through it and find
 4 if it's not in the back.
 5 MS. MAINIGI: Objection.
 6 Form, foundation.
 7 THE WITNESS: No.
 8 BY MR. FARRELL:
 9 Q. Okay. So what I'm going to
 10 ask you is, is to flip to Page 2 and see
 11 Mr. Thomas Gitchell, acting chief
 12 diversion of operations section. Are you
 13 familiar with Mr. Gitchell?
 14 A. Yes, I know who he -- I know
 15 who he is.
 16 Q. Is Mr. Gitchell authorized
 17 to speak on behalf of the DEA at this
 18 time?
 19 MS. MAINIGI: Objection.
 20 Outside the scope. Form.
 21 Foundation.
 22 MR. FINKELSTEIN: Objection.
 23 Vague.
 24 MR. EPPICH: Objection.

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1 attached to this in the Cardinal Health
 2 files, is a cover sheet that says letters
 3 from DEA approving the format.
 4 And if you look, the first
 5 letter is dated April 27, 1984.
 6 Are you familiar with this
 7 correspondence?
 8 MS. MAINIGI: Objection.
 9 Outside the scope. It's 1984.
 10 Form and foundation.
 11 MR. FARRELL: Well, the
 12 irony of it is, is that Cardinal
 13 Health specifically referenced
 14 this document in its combined
 15 discovery responses.
 16 So I'm going to ask you --
 17 MS. MAINIGI: Outside the
 18 scope of this deposition.
 19 MR. FARRELL: I'm going to
 20 ask the witness again --
 21 BY MR. FARRELL:
 22 Q. Are you familiar with this
 23 document?
 24 A. No.

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1 Calls for speculation.
 2 MR. FARRELL: It can't be
 3 speculation. It's the DEA
 4 testifying on whether or not the
 5 chief of the diversion operation
 6 section has the authority to make
 7 statements on behalf of the DEA.
 8 MR. EPPICH: In 1983?
 9 MR. FARRELL: Correct.
 10 Which is reliance by Cardinal
 11 Health and others as to its
 12 suspicious order monitoring
 13 system.
 14 MR. EPPICH: Outside the
 15 scope of the authorization.
 16 MR. FARRELL: It's -- this
 17 is going to be related to the
 18 guidance provided by the DEA.
 19 MR. EPPICH: Well, we'll let
 20 him answer.
 21 BY MR. FARRELL:
 22 Q. So, go back to the prior --
 23 prior page. All right.
 24 So taking off --

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1 MR. FARRELL: If you'll take
 2 off the blow-off first.
 3 BY MR. FARRELL:
 4 Q. The date is April 27, 1984.
 5 You'll see in the bottom right-hand
 6 corner this is a document that is in the
 7 Cardinal Health files.
 8 MS. MAINIGI: Objection.
 9 Form, scope, foundation.
 10 BY MR. FARRELL:
 11 Q. And so I'm going to ask that
 12 the -- that the main paragraph be blown
 13 up so we can read it.
 14 So the NWDA policy that
 15 was -- that we just walked through, is
 16 what this reference is to.
 17 And I'd ask for you to read
 18 it, the portion that's highlighted.
 19 A. "The NWDA's draft format for
 20 a suspicious order" -- "order monitoring
 21 system provides an excellent framework
 22 for distributor registrants to design and
 23 operate a system to disclose to the
 24 registrant suspicious orders of

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1 to time.
 2 THE WITNESS: Yes.
 3 BY MR. FARRELL:
 4 Q. Now, go to the final
 5 sentence. Will you please read this
 6 aloud?
 7 A. "As previously discussed, an
 8 after-the-fact computer printout of sales
 9 data does not relieve a registrant of its
 10 responsibility to report excessive or
 11 suspicious orders when discovered. I am
 12 enclosing a copy of your draft with my
 13 pen and ink changes."
 14 Q. Is this consistent with the
 15 guidance provided by the DEA to
 16 registrants?
 17 MS. MAINIGI: Objection.
 18 Form, scope, foundation.
 19 THE WITNESS: Yes.
 20 BY MR. FARRELL:
 21 Q. Is after the fact reporting
 22 of suspicious orders in full compliance
 23 with federal law?
 24 MS. MAINIGI: Objection.

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1 controlled substances."
 2 Q. Very good.
 3 Now I'd like you to read the
 4 next sentence.
 5 MS. MAINIGI: Objection.
 6 Form, scope, foundation.
 7 THE WITNESS: "However, I am
 8 compelled to note, as I have in
 9 our previous discussions, that any
 10 automated data processing system
 11 may provide the means and
 12 mechanism for compliance when the
 13 data is carefully reviewed and
 14 monitored by the wholesaler."
 15 BY MR. FARRELL:
 16 Q. Is this statement consistent
 17 with guidance provided by the DEA to
 18 registrants?
 19 MS. MAINIGI: Objection.
 20 Outside the scope. Form,
 21 foundation.
 22 MR. EPPICH: Objection.
 23 Vague.
 24 MR. FINKELSTEIN: Vague as

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1 Form, scope, foundation, and vague
 2 as to time.
 3 MR. EPPICH: Objection.
 4 Calls for a legal conclusion.
 5 THE WITNESS: Could you
 6 repeat it?
 7 BY MR. FARRELL:
 8 Q. Has after the fact reporting
 9 of suspicious orders ever been in
 10 compliance with federal law according to
 11 the DEA's guidance provided to
 12 registrants?
 13 A. No.
 14 MS. MAINIGI: Objection.
 15 Form, foundation.
 16 MR. EPPICH: Objection.
 17 Vague.
 18 MR. FINKELSTEIN: For -- for
 19 the witness and Paul, we'll go
 20 another half hour and then take a
 21 break.
 22 MR. FARRELL: Yeah, actually
 23 I've got one more page and then it
 24 might be a good break point.

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1 MR. FINKELSTEIN: Okay.
 2 BY MR. FARRELL:
 3 Q. So from the Cardinal Health
 4 files comes a second letter from the DEA.
 5 And it's dated approximately three weeks
 6 later, May 16, 1984. And it's again from
 7 the DEA.
 8 This letter was specifically
 9 referenced by Cardinal Health in its
 10 discovery responses as a blessing of
 11 after the fact reporting of suspicious
 12 orders. I'll represent that to you.
 13 So what I'd like you to do
 14 is we're going to blow up the first
 15 paragraph and we're going to walk through
 16 it again.
 17 Do you see there right in
 18 the middle? Would you read the
 19 highlighted provision?
 20 MS. MAINIGI: Objection.
 21 Form, foundation, scope.
 22 THE WITNESS: "In order to
 23 clarify any misinterpretations, I
 24 want to assure you that the DEA

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1 question on the record. Yesterday
 2 we were prohibited --
 3 MR. FARRELL: Hold on. You
 4 can do it after he finishes
 5 answering the question.
 6 MS. MAINIGI: Well, I know.
 7 They can answer whenever they want
 8 to, but --
 9 MR. FARRELL: Counsel for
 10 Cardinal, I'm going to ask you not
 11 to make another speaking
 12 objection.
 13 MS. MAINIGI: It's --
 14 MR. FARRELL: Your objection
 15 is made, it's on the record. And
 16 then you can create whatever
 17 record you want as soon as the
 18 witness is done.
 19 So I'm going to ask the
 20 witness to read the highlighted
 21 section.
 22 MS. MAINIGI: My question
 23 is, yesterday --
 24 MR. FARRELL: You are

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1 fully supports the NWDA effort to
 2 introduce a uniform reporting
 3 system among its members."
 4 BY MR. FARRELL:
 5 Q. And then the very next
 6 sentence, please read it. This is the
 7 one quoted by Cardinal Health.
 8 A. This --
 9 MS. MAINIGI: Objection.
 10 Form, foundation, scope.
 11 MR. EPPICH: Object to the
 12 characterization.
 13 BY MR. FARRELL:
 14 Q. Go ahead.
 15 A. "This system as proposed
 16 will meet the reporting requirements of
 17 21 C.F.R. 1301.74(b)."
 18 Q. Now, what I'd like you to do
 19 is read the next sentence which is
 20 omitted from the discovery responses
 21 filed by Cardinal Health.
 22 MS. MAINIGI: Objection.
 23 Form, foundation, and scope.
 24 And DOJ, I'd like to ask a

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1 becoming disruptive. You're
 2 becoming disruptive.
 3 MS. MAINIGI: Then --
 4 MR. FARRELL: And you are
 5 intervening. And -- and we will
 6 get Special Master Cohen on.
 7 MS. MAINIGI: That's fine.
 8 I was prohibited from
 9 asking, or somebody was prohibited
 10 from asking the question --
 11 MR. FARRELL: If
 12 Judge Polster were sitting here
 13 right now, he would sanction you.
 14 MS. MAINIGI: Well, then I
 15 guess lucky for me he is not. But
 16 will you let me get my objection
 17 out?
 18 MR. FARRELL: No, this is my
 19 direct testimony, and you're
 20 making a speaking objection.
 21 MS. MAINIGI: Just like you
 22 made yesterday multiple times.
 23 But this is a question to
 24 the DEA. It's not a speaking

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1 objection.
 2 And the question is:
 3 Yesterday, we were prohibited and
 4 the witness was instructed to not
 5 answer questions on communications
 6 with trade organizations.
 7 Is the DEA/DOJ going to
 8 allow this question which is the
 9 same type?
 10 MR. FINKELSTEIN: I disagree
 11 with your characterization of what
 12 happened yesterday. You can ask
 13 your questions and I will make my
 14 objections, and counsel can ask
 15 his questions and I will make my
 16 objections.
 17 BY MR. FARRELL:
 18 **Q. Would you please read the**
 19 **highlighted section.**
 20 **A. "However, I want to make it**
 21 **clear that the submission of a monthly**
 22 **printout of after-the-fact sales will not**
 23 **relieve a registrant from the**
 24 **responsibility of reporting excessive or**

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1 going to have more than time.
 2 You're going to have days before
 3 we reconvene for your redirect.
 4 MR. STEPHENS: You
 5 understand what I'm saying.
 6 You're handing me things. I'm
 7 doing the same to you. I've never
 8 been in a situation where the
 9 witness is being examined and I
 10 don't have the document in front
 11 of me.
 12 MR. FARRELL: I'm putting
 13 the document up on the screen as a
 14 demonstrative point and then
 15 asking the DEA to comment on it.
 16 There is nothing that I have shown
 17 anybody that is not in the record
 18 and that hasn't been used in prior
 19 testimony.
 20 In fact, it's specifically
 21 referenced in y'all's discovery
 22 responses.
 23 MS. MAINIGI: The 1970
 24 hearings?

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1 **suspicious orders. DEA has interpreted**
 2 **orders to mean prior to shipment."**
 3 **Q. Is this statement consistent**
 4 **with the guidance the DEA has always**
 5 **provided to registrants?**
 6 MS. MAINIGI: Objection.
 7 Form. Foundation. Scope.
 8 **THE WITNESS: Yes.**
 9 MR. FARRELL: This might be
 10 a good break point if the DOJ
 11 agrees.
 12 MR. STEPHENS: Before we
 13 break, Paul, just real quick, can
 14 we please get a copy of the
 15 presentation and the documents so
 16 that we can review them
 17 simultaneously while you're doing
 18 this so we can handle our
 19 redirect?
 20 MR. FARRELL: Yes, yes.
 21 MR. STEPHENS: Okay. If we
 22 get them afterwards, then we're
 23 going to need time to study them.
 24 MR. FARRELL: Yeah, you're

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1 MR. FARRELL: So at this
 2 point in time -- at this point at
 3 time, can we go off the record for
 4 a break?
 5 MR. FINKELSTEIN: Oh, I
 6 thought we already were.
 7 THE VIDEOGRAPHER: 2:04. We
 8 are off the video record.
 9 (Short break.)
 10 MR. FARRELL: As one of the
 11 co-leads for the plaintiffs' PEC
 12 in the MDL litigation, I'll report
 13 to you what David Cohen said.
 14 Special Master Cohen
 15 admonished us and reminded us of
 16 his prior orders that we are to
 17 eliminate speaking objections,
 18 we're all to make sure that when
 19 we state an objection, it's
 20 concise.
 21 He advised both plaintiffs
 22 and defendants to make sure you
 23 comply with it. He's not going to
 24 tolerate speaking objections or

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1 coaching of witnesses. We've
 2 discussed this in other
 3 depositions.
 4 He also instructed that it's
 5 not for us to be disputing or
 6 debating the Touhy, that that's
 7 for the government and for the
 8 government to make the decisions.
 9 And the discussion of
 10 admissibility is for another day,
 11 and that he expects us to conduct
 12 ourselves like professionals and
 13 move forward as best as we can.
 14 And then on day three he's
 15 volunteered to make himself
 16 available.
 17 Is there anything else that
 18 anybody else would like to add?
 19 MR. BENNETT: Yes, he also
 20 made it very clear that there will
 21 not be a fourth day.
 22 MR. FARRELL: All right.
 23 Now, what I would like to do is
 24 I'm going to provide demonstrative

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1 (Document marked for
 2 identification as Exhibit
 3 DEA-Prevoznik-P-1.)
 4 MR. FINKELSTEIN: So just to
 5 be clear, you're handing these out
 6 to us so that we have them.
 7 MR. FARRELL: I'm having
 8 this marked as an exhibit and then
 9 the government can have it.
 10 The second demonstrative
 11 exhibit, Plaintiffs' 2 is the
 12 United States USCCAN, U-S-C-C-A-N,
 13 and it was referenced from the
 14 congressional history.
 15 MR. FINKELSTEIN: Are you
 16 going to mark it?
 17 THE VIDEOGRAPHER: They want
 18 video for this.
 19 MR. FARRELL: Okay. We'll
 20 start over.
 21 THE VIDEOGRAPHER: 2:47. We
 22 are on the video record.
 23 MR. FARRELL: Can I have
 24 that back, please.

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1 exhibits.
 2 MR. FINKELSTEIN: One more
 3 thing. We did take issue from the
 4 fact that we've been excluded from
 5 many of the parties' conversations
 6 with the court concerning
 7 government witnesses and
 8 government rights. We asked the
 9 court formally, as we have in the
 10 past, as we have asked the parties
 11 many times in the past, to be
 12 included in conversations with the
 13 court, and the court unambiguously
 14 required the parties to do so.
 15 MR. FARRELL: Very good.
 16 So the first set of
 17 demonstrative exhibits are four
 18 slides that I'll have marked as
 19 Plaintiffs' 1. And it is the four
 20 sections of the United States
 21 code, including 801, 812, and 823.
 22 These are the same slides that
 23 were used in the McKesson 30(b)(6)
 24 deposition.

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1 Plaintiffs' Exhibit 1 is the
 2 four slides that demonstrate the
 3 United States Code 21 U.S.C. 801,
 4 812, 821 and 823.
 5 Plaintiffs' 2.
 6 (Document marked for
 7 identification as Exhibit
 8 DEA-Prevoznik-P-2.)
 9 MR. FARRELL: Is HR REP
 10 Number 1444, 91st Congress.
 11 Second session, 1970. This is the
 12 congressional record from the
 13 Controlled Substances Act. It's
 14 the same document that was entered
 15 in the McKesson 30(b)(6)
 16 deposition.
 17 (Document marked for
 18 identification as Exhibit
 19 DEA-Prevoznik-P-3.)
 20 MR. FARRELL: Plaintiffs' 3
 21 is from the HathiTrust, and it is
 22 the drug abuse control amendments
 23 from the 1970 hearings, 91st
 24 Congress, second session. 900

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1 pages of which we referenced only
 2 a couple.
 3 This is the first time that
 4 was referenced in deposition as --
 5 and in the MDL that I'm aware of.
 6 (Document marked for
 7 identification as Exhibit
 8 DEA-Prevoznik-P-4.)
 9 MR. FARRELL: Plaintiffs' 4
 10 is -- we referenced Page 9 of the
 11 Federal Register. Volume 36,
 12 Number 80, from March 13, 1971.
 13 MR. STEPHENS: This is
 14 Number 4, Paul? Number 4?
 15 MR. FINKELSTEIN: This is
 16 Number 4.
 17 MR. FARRELL: Number 5 was
 18 the Federal Register from proposed
 19 rulemaking from Saturday, March --
 20 actually, that's -- this is
 21 another copy. What was that
 22 number? I'm sorry.
 23 MR. FINKELSTEIN: That was
 24 4.

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1 21 C.F.R. 1301.74.
 2 (Document marked for
 3 identification as Exhibit
 4 DEA-Prevoznik-P-7.)
 5 MR. FARRELL: Plaintiffs' 7
 6 is a document produced by Cardinal
 7 Health in discovery and MDL2804.
 8 It begins with Bates stamp
 9 CAH_MDL2804_01465723, and it
 10 extends all the way through
 11 CAH_MDL2804_01465734.
 12 It's Plaintiffs' Exhibit 7.
 13 And I'll represent that it was
 14 also in the government reliance
 15 materials that they produced
 16 yesterday at deposition.
 17 That brings us up-to-date
 18 for all of the demonstrative
 19 exhibits that were used so far on
 20 the record.
 21 MR. STEPHENS: Thank you.
 22 MR. FINKELSTEIN: So should
 23 we go off the record and bring the
 24 witness back?

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1 MR. FARRELL: Did I make a
 2 mistake? Sorry I got that
 3 backwards.
 4 Number 4 is from March 13,
 5 1971. It's Volume 36, Number 50,
 6 from the Federal Register.
 7 Plaintiffs' Exhibit 5 is
 8 from April 24, 1971, from the
 9 Federal Register, Volume 36,
 10 Number 80.
 11 (Document marked for
 12 identification as Exhibit
 13 DEA-Prevoznik-P-5.)
 14 MR. FARRELL: And we
 15 referenced Paragraph 6 at the top
 16 of the first page.
 17 (Document marked for
 18 identification as Exhibit
 19 DEA-Prevoznik-P-6.)
 20 MR. FARRELL: Plaintiffs' 6
 21 is another slide that's been used
 22 in the McKesson depositions of
 23 Nate Hardle, 30(b)(6). And it's
 24 simply a demonstrative exhibit of

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1 MR. FARRELL: Yes.
 2 MS. MAINIGI: Yes.
 3 THE VIDEOGRAPHER: 2:51. We
 4 are off the video record.
 5 (Brief pause.)
 6 THE VIDEOGRAPHER: 2:55. We
 7 are on the video record.
 8 MR. FARRELL: More
 9 housecleaning. Earlier today we
 10 referenced -- more housecleaning.
 11 Earlier we referenced a
 12 position taken by Cardinal Health
 13 in a pleading. It's United States
 14 District Court for the -- United
 15 States District Court for the
 16 District of Columbia, Cardinal
 17 Health versus Eric Holder, Case
 18 Number 1:12-cv-00185-RBW.
 19 It is Document 16 in the
 20 pleading index, filed on
 21 February 13, 2012. It's
 22 previously been circulated, I'll
 23 show it to you, even though it's
 24 not being admitted through this

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1 witness.
 2 For the record that's the
 3 document that I referenced.
 4 (Document marked for
 5 identification as Exhibit
 6 DEA-Prevoznik-P-8.)
 7 MR. FARRELL: Same thing
 8 with earlier today, I referenced
 9 what's being marked now -- that
 10 was Plaintiff 8. This is going to
 11 be Plaintiff 9.
 12 (Document marked for
 13 identification as Exhibit
 14 DEA-Prevoznik-P-9.)
 15 MR. FARRELL: And this is a
 16 single page from a document with a
 17 Bates stamp MCK MDL 00409239. And
 18 again, this is a document that was
 19 produced by McKesson in discovery
 20 that I referenced and asked
 21 questions about it with this
 22 witness.
 23 MR. FINKELSTEIN: Are you
 24 going to provide me with copies?

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1 Q. On behalf of the DEA, do you
 2 recognize this document?
 3 A. Yes, I do.
 4 Q. What is it?
 5 A. It is part of our diversion
 6 investigators manual.
 7 Q. What does that mean?
 8 What -- what is a diversion
 9 investigators manual?
 10 A. It's a manual that breaks
 11 down our responsibilities, our job.
 12 It -- it covers the whole gambit of what
 13 registration is -- what a registrant is,
 14 down to record reports, requirements. It
 15 goes through our scheduled
 16 investigations, pre-registration
 17 investigations, how to -- conducting
 18 audits when we do the scheduled
 19 investigation, what topics, what areas to
 20 cover.
 21 It covers controlled
 22 substances -- controlled substances. It
 23 also covers the chemicals, List I
 24 chemicals, the requirements of that, as

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1 MR. FARRELL: Yes.
 2 Did you get a copy of the
 3 NWDA policy?
 4 MR. FINKELSTEIN: Thanks.
 5 MR. FARRELL: That's
 6 previously been made.
 7 MR. FINKELSTEIN: Just wait
 8 for a question.
 9 BY MR. FARRELL:
 10 Q. Mr. Prevoznik, the next
 11 document I'm going to reference is
 12 actually in your notebook.
 13 A. Okay.
 14 Q. In the reliance materials
 15 that you disclosed yesterday.
 16 And it's the -- from the
 17 1996 diversion investigators manual.
 18 Section 5126.
 19 MR. FARRELL: Bring it up on
 20 the screen. And pass it down.
 21 Here is some extra copies in
 22 case people didn't bring their
 23 notebooks back.
 24 BY MR. FARRELL:

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1 well as preregistration investigations of
 2 chemicals, applicants.
 3 It covers the -- the gambit
 4 of exactly what our job is.
 5 Q. Are these -- in this page
 6 that we're showing here, the bottom
 7 right-hand corner is a Bates stamp. Can
 8 you read that Bates stamp?
 9 A. 00025231.
 10 Q. Okay. Is this a document
 11 produced by the DEA in this litigation at
 12 the request of counsel for the diversion
 13 investigators manual from 1996?
 14 MR. FINKELSTEIN: Scope.
 15 We'll stipulate that we
 16 produced it.
 17 MR. FARRELL: Thank you.
 18 BY MR. FARRELL:
 19 Q. So the title of Section 5126
 20 says what?
 21 A. Requirement to report
 22 suspicious orders.
 23 Q. Would you read the first
 24 sentence of the first paragraph aloud?

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1 A. "Registrants are required to
 2 inform DEA of suspicious orders in
 3 accordance with 21 C.F.R. 1301.74(b).
 4 DEA field offices are not to approve or
 5 disapprove supplier shipments of
 6 controlled substances. The
 7 responsibility for making the decision to
 8 ship rests with the supplier. No (sic)
 9 exception to this occurs when a supplier
 10 complies with a DEA field office's
 11 request to initiate a controlled delivery
 12 of controlled substances."
 13 Q. Is this consistent with the
 14 guidance provided by the DEA to
 15 registrants?
 16 MS. MAINIGI: Objection.
 17 THE WITNESS: Yes.
 18 MR. FARRELL: Now, if you'll
 19 go down to -- keep going.
 20 BY MR. FARRELL:
 21 Q. Beginning with
 22 "registrants," could you begin reading,
 23 please.
 24 A. "Registrants who routinely

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1 MS. MAINIGI: Objection to
 2 form.
 3 MR. FINKELSTEIN: Vague as
 4 to time.
 5 BY MR. FARRELL:
 6 Q. In 1996.
 7 A. Yes.
 8 Q. Are you aware of any
 9 deviation or change from that position by
 10 the DEA since 1996?
 11 MS. MAINIGI: Objection.
 12 THE WITNESS: No.
 13 BY MR. FARRELL:
 14 Q. So the next sentence is just
 15 a recitation of the suspicious order
 16 definition. What I'd like you to do is
 17 go down to where it starts, "The supplier
 18 can determine," and begin reading aloud.
 19 A. "The supplier can determine
 20 whether the order is excessive by
 21 checking their own sales and establishing
 22 the average amount of controlled
 23 substances shipped to registrants of the
 24 same apparent size in a particular

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1 report suspicious orders, yet fill these
 2 orders, with reason to believe they are
 3 destined for the illicit market, are
 4 expressing an attitude of
 5 irresponsibility that is detriment to the
 6 public health and safety as set forth in
 7 21 U.S.C. 823 and 824."
 8 Q. Thank you. Is this
 9 consistent with the guidance provided by
 10 the DEA to registrants?
 11 MS. MAINIGI: Objection to
 12 form.
 13 MR. FINKELSTEIN: Objection.
 14 Form.
 15 THE WITNESS: Yes.
 16 BY MR. FARRELL:
 17 Q. So this is the official
 18 policy of the DEA as of 1996, agreed?
 19 A. Yes.
 20 Q. Is this the position that
 21 the DEA was instructing its diversion
 22 investigators to take when looking into
 23 cases involving the distribution of
 24 controlled substances?

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1 geographic area."
 2 Q. Read the next sentence,
 3 please.
 4 A. "If the customer exceeds
 5 this threshold, the request should be
 6 viewed as suspicious."
 7 Q. Is this consistent with the
 8 guidance that the DEA provided to
 9 registrants since at least 1996?
 10 MS. MAINIGI: Objection to
 11 form.
 12 THE WITNESS: Yes.
 13 BY MR. FARRELL:
 14 Q. Is this the position that
 15 the DEA -- strike that.
 16 The reading of this seems to
 17 indicate that if you exceed an average
 18 amount, if a customer exceeds an average
 19 amount -- let me start over.
 20 This directive that DEA had
 21 internally seems to indicate that it
 22 considered that an order in excess of a
 23 customer's average amount should be
 24 deemed suspicious. Is that a fair

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1 depiction?
 2 A. Could you please --
 3 MS. MAINIGI: Objection to
 4 form.
 5 THE WITNESS: Could you
 6 please repeat that.
 7 BY MR. FARRELL:
 8 Q. Yeah. When I read this, it
 9 seems to indicate that a wholesale
 10 distributor should watch the average
 11 purchase by a customer over time, and if
 12 that average is exceeded, it should be
 13 deemed suspicious. Is that a fair
 14 reading of this provision?
 15 MR. FINKELSTEIN: Object to
 16 the characterization.
 17 MS. MAINIGI: Object to
 18 form. Calls for a legal
 19 conclusion.
 20 THE WITNESS: Well, I think
 21 it also includes that it has to
 22 look at the other registrants in
 23 that area. It's not just the
 24 registrant that's ordering, but

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1 Q. "This activity."
 2 A. "This activity, over
 3 extended periods of time, would lead a
 4 reasonable person to believe that
 5 controlled substances possibly are being
 6 diverted.
 7 Q. Now, so what I'm asking you
 8 is, when you read this, is it fair to
 9 assume that this is consistent with the
 10 DEA's guidance to industry since at least
 11 1996?
 12 MR. FINKELSTEIN: Objection.
 13 Vague.
 14 MS. MAINIGI: Objection to
 15 form.
 16 THE WITNESS: Yes.
 17 BY MR. FARRELL:
 18 Q. Would you read the next
 19 sentence, please.
 20 A. "An investigation will be
 21 conducted for possible violation of the
 22 CSA and regulations upon determining that
 23 the reporting registrant, as a general
 24 practice, does not voluntarily halt

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1 it's also comparing against the
 2 other registrants in that area.
 3 BY MR. FARRELL:
 4 Q. So if you take an average of
 5 the registrants in the area and you
 6 calculate that, if a customer exceeds
 7 that average, is that a red flag for a
 8 wholesale distributor that the order may
 9 be suspicious?
 10 MS. MAINIGI: Objection.
 11 Calls for speculation. Objection
 12 to form.
 13 THE WITNESS: Yes.
 14 BY MR. FARRELL:
 15 Q. And is that consistent with
 16 the directives the DEA has given to
 17 registrants since at least 1996?
 18 MS. MAINIGI: Objection to
 19 form.
 20 THE WITNESS: Yes.
 21 BY MR. FARRELL:
 22 Q. The next sentence, would you
 23 read, please.
 24 A. I forgot where I stopped.

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1 shipments of controlled substances to
 2 registrants involved in suspected
 3 diversion or to registrants against whom
 4 previous action has been taken."
 5 Q. Is this consistent with the
 6 guidance provided by the DEA to
 7 registrants since at least 1996?
 8 A. Yes.
 9 MS. MAINIGI: Objection to
 10 form.
 11 BY MR. FARRELL:
 12 Q. This last sentence that you
 13 read contains a statement that "a
 14 registrant shall not ship a suspicious
 15 order." Is that a fair reading?
 16 MR. FINKELSTEIN: Objection.
 17 MR. EPPICH: Objection to
 18 form.
 19 MR. FINKELSTEIN: Object to
 20 the form.
 21 BY MR. FARRELL:
 22 Q. Strike that. I'll ask it
 23 again.
 24 Based upon this 1996

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1 document, was it the DEA's position that
 2 a registrant should halt shipments of
 3 controlled substances that are involved
 4 in suspected diversion?
 5 A. Yes.
 6 Q. And does that include when a
 7 registrant has placed orders repeatedly
 8 in excess of the regional average?
 9 MR. EPPICH: Objection to
 10 form.
 11 MS. MAINIGI: Objection to
 12 form.
 13 THE WITNESS: Yes.
 14 (Document marked for
 15 identification as Exhibit
 16 DEA-Prevoznik-P-10.)
 17 BY MR. FARRELL:
 18 Q. I'm going to have marked
 19 next Plaintiffs' Exhibit 10. And I'll
 20 show it to you and provide a copy to
 21 counsel and ask that you take a look at
 22 it, please.
 23 MR. FINKELSTEIN: Let me
 24 make sure that I get one of those.

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1 document is from whom?
 2 MS. MAINIGI: Objection to
 3 form. Foundation.
 4 THE WITNESS: I'm sorry,
 5 it -- it's Katherine Myrick. It's
 6 from Katherine Myrick, chiefs
 7 operations unit, our FOIA records
 8 management section.
 9 BY MR. FARRELL:
 10 Q. What is this document that
 11 you're looking at, do you recognize it?
 12 MS. MAINIGI: Objection.
 13 Form. Foundation.
 14 BY MR. FARRELL:
 15 Q. Not the attached document,
 16 the cover letter.
 17 MS. MAINIGI: Same
 18 objections.
 19 THE WITNESS: Yeah, I've --
 20 I've seen forms very similar to
 21 this.
 22 BY MR. FARRELL:
 23 Q. Okay. And so what does the
 24 DEA use this form for?

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1 MR. FARRELL: And for
 2 reference to counsel this is
 3 Bates-stamped
 4 CAH_MDL2804_02203353.
 5 BY MR. FARRELL:
 6 Q. Mr. Prevoznik, do you
 7 recognize this type of document?
 8 MS. MAINIGI: Objection to
 9 form.
 10 THE WITNESS: Yes.
 11 BY MR. FARRELL:
 12 Q. And what is it that you're
 13 looking at?
 14 A. A FOIA request.
 15 Q. And the FOIA request was
 16 sent by whom?
 17 A. Cardinal Health.
 18 Q. And to whom was it sent?
 19 A. Robert -- I don't know how
 20 to say his last name -- Giacalone.
 21 Q. All right. So let's back
 22 up.
 23 This is a request -- this
 24 isn't a request by Cardinal Health. The

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1 MS. MAINIGI: Objection.
 2 Form. Foundation.
 3 THE WITNESS: To respond
 4 to --
 5 MR. FINKELSTEIN: Scope.
 6 THE WITNESS: To respond to
 7 FOIA requests.
 8 BY MR. FARRELL:
 9 Q. Okay. So you see where it
 10 says request number?
 11 A. Yes.
 12 Q. Okay. Does the DEA know
 13 what that number means or represents?
 14 MR. FINKELSTEIN: Scope.
 15 MS. MAINIGI: Objection.
 16 Scope. Foundation.
 17 THE WITNESS: Yes.
 18 BY MR. FARRELL:
 19 Q. Okay. What does that number
 20 mean?
 21 MS. MAINIGI: Same
 22 objection.
 23 THE WITNESS: That is the
 24 number that is assigned to this

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1 FOIA request when it comes in.
 2 BY MR. FARRELL:
 3 Q. Is there any particular
 4 significance of the first two letters
 5 being -- numbers being 03?
 6 MR. FINKELSTEIN: Scope.
 7 BY MR. FARRELL:
 8 Q. To -- to the extent that you
 9 know as the Drug Enforcement Agency that
 10 wrote this document?
 11 A. It's the year.
 12 MS. MAINIGI: Objection.
 13 Scope. Foundation.
 14 BY MR. FARRELL:
 15 Q. So this is, to the DEA's
 16 best knowledge and information, a
 17 document that was generated in the year
 18 2003?
 19 A. Yes.
 20 MR. EPPICH: Object to form.
 21 BY MR. FARRELL:
 22 Q. And it was generated by you,
 23 the DEA, and sent to Cardinal Health?
 24 MS. MAINIGI: Objection.

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1 BY MR. FARRELL:
 2 **Q. Is it fair to reach the**
 3 **conclusion that the DEA disclosed to**
 4 **Cardinal Health in the year 2003**
 5 **Section 5126 of the 1996 diversion**
 6 **investigators manual?**
 7 MS. MAINIGI: Objection.
 8 Scope. Foundation.
 9 MR. FINKELSTEIN: Scope.
 10 **THE WITNESS: Yes.**
 11 BY MR. FARRELL:
 12 Q. The next document that I am
 13 going to reference, it was produced and
 14 circulated yesterday, but we have
 15 additional copies, is the 1998 Janet Reno
 16 report.
 17 (Document marked for
 18 identification as Exhibit
 19 DEA-Prevoznik-P-11.)
 20 BY MR. FARRELL:
 21 Q. I'm going to hand you what
 22 has been premarked as deposition
 23 plaintiff Exhibit 11. And have you take
 24 a look at it.

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1 Foundation. Scope.
 2 MR. FINKELSTEIN: Scope.
 3 THE WITNESS: Yes.
 4 BY MR. FARRELL:
 5 Q. And then when you look at
 6 the document that is attached, can you
 7 tell me what it -- that document is if
 8 you know?
 9 A. It's a section from our
 10 diversion investigators manual. And this
 11 is the cover sheet from our diversion
 12 investigators manual.
 13 Q. And what year is this
 14 diversion investigators manual?
 15 A. 1996, April 1996.
 16 Q. If you would take a moment,
 17 could you tell me whether or not this
 18 document that was produced by Cardinal is
 19 consistent with the diversion
 20 investigators manual that we just went
 21 over, produced by the federal government?
 22 MS. MAINIGI: Objection.
 23 Form. Foundation.
 24 THE WITNESS: Yes, it does.

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1 MR. FARRELL: Does anybody
 2 else need another copy from
 3 yesterday?
 4 It's the same one. It's
 5 Bates Stamp CAH_HOUSE-002207. And
 6 it's double-Bates-stamped as
 7 CAH_MDL_PRIORPROD_HOUSE_0002207.
 8 Off the record.
 9 (Whereupon, a discussion was
 10 held off the record.)
 11 BY MR. FARRELL:
 12 Q. Mr. Prevoznik, do you
 13 recognize this document?
 14 A. Yes.
 15 Q. What is it?
 16 A. It's a report to the U.S.
 17 attorneys -- Attorney General. It's a
 18 report by the suspicious orders task
 19 force that was mandated to convene, and
 20 it's their report based on the
 21 Comprehensive Methamphetamine Control Act
 22 in 1996.
 23 Q. To the best of your
 24 knowledge, is this a true and accurate

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1 copy of the report provided by the United
 2 States Drug Enforcement Administration to
 3 Attorney General Janet Reno?
 4 A. To the best of my knowledge,
 5 yes.
 6 Q. What is the date of the
 7 document?
 8 A. October 1998.
 9 Q. All right. Go to the next.
 10 So I'm going to refer you to
 11 page Bates stamp 2211. So this is in the
 12 executive summary. And if you'll see the
 13 second full sentence. There it is.
 14 Can you tell me what the
 15 implementation mandate was for this
 16 report provided by the DEA to Attorney
 17 General Janet Reno?
 18 MS. MAINIGI: Objection.
 19 Foundation.
 20 THE WITNESS: It was the
 21 mandate that this task force
 22 convene together and come up with
 23 a report based on their
 24 discussions.

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1 Did I read that accurately?
 2 A. Yes.
 3 Q. Are you familiar with
 4 21 U.S.C. 830(b)(1)(A)?
 5 A. Can I look at it and refresh
 6 my memory?
 7 Q. You can. We have a -- I
 8 believe we have a slide for you. And
 9 it's also probably in -- in --
 10 MR. FARRELL: You have it?
 11 There we go.
 12 BY MR. FARRELL:
 13 Q. And I'm going to show you
 14 the hardcopy of it and then we have
 15 copies of this --
 16 MR. FINKELSTEIN: He has his
 17 own copy.
 18 BY MR. FARRELL:
 19 Q. Very good.
 20 This provision that we're
 21 looking at, and the distinction that I
 22 want to make, what is the DEA's
 23 understanding of the types of
 24 transactions that should be reported as

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1 BY MR. FARRELL:
 2 Q. All right. So in general,
 3 can you just, as the DEA, tell me, when
 4 we reference this document, can we just
 5 call it the Reno report?
 6 A. Yes.
 7 Q. Can you tell me in general,
 8 do you -- does the DEA have an
 9 understanding of what the purpose was of
 10 this report that it generated for the
 11 Attorney General?
 12 A. It is our understanding that
 13 this report was to discuss how to put a
 14 suspicious ordering system forward to
 15 handle the listed chemicals because of
 16 the methamphetamine problem that we were
 17 having in the United States.
 18 Q. Now, this is also from the
 19 executive summary. And it says that "the
 20 charter required the establishment of a
 21 task force to prepare recommendations
 22 concerning additional guidelines to be
 23 used by the chemical industry in
 24 complying with 21 U.S.C. 830(b)(1)(A)."

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1 suspicious pursuant to 21 U.S.C. 830?
 2 MR. FINKELSTEIN: Scope.
 3 MS. MAINIGI: Objection.
 4 Form. Foundation. Scope.
 5 THE WITNESS: To regulate
 6 a -- regulated transactions, a
 7 transaction for -- in this
 8 particular section, regarding
 9 chemicals.
 10 BY MR. FARRELL:
 11 Q. So we are talking about
 12 List I chemicals, not controlled
 13 substances?
 14 A. Correct.
 15 Q. And when we are talking
 16 about methamphetamine, what we are
 17 specifically talking about are regulated
 18 chemicals the DEA refers to as List I,
 19 which include ephedrine and
 20 pseudoephedrine?
 21 MR. FINKELSTEIN: Scope.
 22 THE WITNESS: Correct.
 23 MS. MAINIGI: Objection to
 24 form.

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1 BY MR. FARRELL:
 2 Q. I promise I'll get there in
 3 a second.
 4 So under this report, it's
 5 my understanding, is that the DEA was
 6 complying with Section 21 U.S.C. 830,
 7 which, if you read Paragraph 1(a) out
 8 loud, requires what? Reports to the
 9 Attorney General. It says, "Each
 10 regulated person shall report to the
 11 Attorney General." And what does A say?
 12 MR. STEPHENS: Object to
 13 form.
 14 THE WITNESS: "Any regulated
 15 transaction involving an
 16 extraordinary quantity of a listed
 17 chemical, an uncommon method of
 18 payment or delivery, or any other
 19 circumstance that the regulated
 20 person believes may indicate that
 21 the listed chemical will be used
 22 in violation of this subchapter."
 23 BY MR. FARRELL:
 24 Q. So, I'm asking the DEA, the

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1 A. Yeah. I'm waiting to make
 2 sure --
 3 MS. MAINIGI: Objection.
 4 Scope and foundation.
 5 MR. FINKELSTEIN: Scope.
 6 THE WITNESS: Yes.
 7 BY MR. FARRELL:
 8 Q. What size transaction should
 9 registrants look for when they're looking
 10 for suspicious orders of controlled
 11 substances?
 12 A. Unusual -- excessive.
 13 Excessive.
 14 Q. And a definition of
 15 suspicious order in the regulation, is
 16 unusual what?
 17 A. Unusual quantity.
 18 MS. MAINIGI: Objection to
 19 form.
 20 BY MR. FARRELL:
 21 Q. Unusual size --
 22 MS. MAINIGI: Objection to
 23 form.
 24 THE WITNESS: Unusual size,

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1 Reno report from 1998, its authority
 2 arises out of the Methamphetamine Act; is
 3 that right?
 4 MR. STEPHENS: Object to
 5 form.
 6 MS. MAINIGI: Objection.
 7 Scope.
 8 MR. FINKELSTEIN: Scope.
 9 THE WITNESS: Yes.
 10 BY MR. FARRELL:
 11 Q. And the definition of a
 12 suspicious order under the
 13 Methamphetamine Act is what? What size
 14 transaction?
 15 A. The extraordinary quantity.
 16 Q. All right. Now, controlled
 17 substances are not governed by the
 18 methamphetamine act unless they contain
 19 ephedrine or pseudoephedrine; is that
 20 right?
 21 MR. STEPHENS: Object to
 22 form.
 23 BY MR. FARRELL:
 24 Q. I'm asking you, the DEA?

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1 patterns deviating from a
 2 normal -- can I refresh my memory
 3 just looking at it?
 4 BY MR. FARRELL:
 5 Q. Go ahead, yeah. You see
 6 where I'm going with this. I'm trying to
 7 figure out the difference and whether
 8 there's a difference between the
 9 definition of a suspicious order, if it
 10 contains a List I chemical versus the
 11 definition of suspicious order if it's a
 12 controlled substance.
 13 MS. MAINIGI: Objection.
 14 Coaching the witness. Objection
 15 to form.
 16 THE WITNESS: So suspicious
 17 orders for controlled substances
 18 include orders of unusual size,
 19 orders deviating substantially
 20 from a normal pattern, and orders
 21 of unusual frequency.
 22 BY MR. FARRELL:
 23 Q. So from the DEA's
 24 perspective, what is bigger? Unusual or

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1 extraordinary?
 2 MS. MAINIGI: Objection.
 3 Scope. Objection. Form.
 4 MR. EPPICH: Objection.
 5 Calls for a legal conclusion.
 6 MR. FINKELSTEIN: I object
 7 to the scope. You can answer.
 8 THE WITNESS: Can you repeat
 9 it?
 10 BY MR. FARRELL:
 11 Q. Yeah. From the DEA's
 12 perspective and guidance that it provides
 13 to industry, what is larger, an order
 14 that's unusual, or an order that's
 15 extraordinary?
 16 MS. MAINIGI: Objection.
 17 Scope, form, foundation.
 18 MR. EPPICH: Objection.
 19 Calls for a legal conclusion.
 20 MR. FINKELSTEIN: Scope,
 21 calls for a legal conclusion.
 22 THE WITNESS: I believe it's
 23 going to be dependent on the
 24 product too. So it's not -- it's

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1 MR. EPPICH: Objection.
 2 Calls for a legal conclusion.
 3 MR. FINKELSTEIN: Object to
 4 the form.
 5 THE WITNESS: Can you please
 6 repeat it.
 7 BY MR. FARRELL:
 8 Q. Yeah, I'm trying to get
 9 there. I'm trying to establish --
 10 because has the DEA ever told any
 11 distributor of prescription opioids that
 12 it can use the definition of suspicious
 13 order from the Methamphetamine Act?
 14 MR. EPPICH: Objection to
 15 form. Foundation.
 16 THE WITNESS: The term --
 17 the term that you used, "ever,"
 18 that's all encompassing. So I
 19 don't know that I can -- I cannot
 20 testify that no one has ever said
 21 that.
 22 BY MR. FARRELL:
 23 Q. So what I'm going to refer
 24 back to is this.

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1 not just on size or extraordinary.
 2 It's varying criteria. It could
 3 be other criteria. So is it a
 4 chemical? Is it a controlled
 5 substance? What schedule is it
 6 in? That kind of thing.
 7 BY MR. FARRELL:
 8 **Q. Because it -- comparing a**
 9 **List I chemical to a controlled**
 10 **substance, is comparing apples to**
 11 **oranges; is that fair?**
 12 MR. STEPHENS: Object to
 13 form.
 14 **THE WITNESS: Yes.**
 15 MR. EPPICH: Objection.
 16 Vague.
 17 BY MR. FARRELL:
 18 Q. Okay. So when you're trying
 19 to apply -- if you're selling an
 20 extraordinary quantity of opioids, is
 21 that more than, equal to, or less than
 22 unusual sizes?
 23 MS. MAINIGI: Objection.
 24 Scope. Objection.

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1 Let's go to Page 2247 of the
 2 Reno report. This was discussed at
 3 length yesterday. Do you recall this,
 4 Exhibit 2?
 5 A. Yes.
 6 Q. Okay. So the first thing I
 7 want you to -- so the first thing that
 8 we're going to do is we're going to look
 9 at where it says "Note: Factor equals
 10 three."
 11 **Okay. So this was discussed**
 12 **yesterday. I'm just trying to find**
 13 **clarification.**
 14 **This Reno report, according**
 15 **to this note, applies to List I**
 16 **chemicals, agreed?**
 17 **A. Yes.**
 18 MR. FINKELSTEIN: Wait.
 19 THE WITNESS: Sorry.
 20 MR. FINKELSTEIN: Scope.
 21 MS. MAINIGI: Objection.
 22 Foundation.
 23 BY MR. FARRELL:
 24 **Q. Second -- secondly, it can**

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1 apply to Control II and Control III
 2 controlled substances that contain List I
 3 chemicals. Agreed or disagree?
 4 MS. MAINIGI: Objection.
 5 Scope. Foundation.
 6 MR. O'CONNOR: Objection to
 7 form.
 8 **THE WITNESS: Agreed.**
 9 BY MR. FARRELL:
 10 Q. And it applies to Control
 11 III. And what does that mean N-V? "N-V
 12 controlled substances and noncontrolled
 13 over-the-counter products containing
 14 List I chemical items."
 15 Do you know what that means?
 16 A. Looking at it, I would be
 17 speculating what it means.
 18 Based on what I know, that
 19 looks like III-N, would be III,
 20 non-narcotic.
 21 Q. So more directly, has the
 22 DEA ever provided -- I keep using that
 23 word "ever."
 24 Has the DEA -- does the DEA

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1 **THE WITNESS: Yes.**
 2 BY MR. FARRELL:
 3 Q. There was a suggestion made
 4 by some of defense counsel yesterday
 5 during your examination that it also
 6 applies to controlled substances.
 7 And so what I would like you
 8 to do is take a look at the note and tell
 9 me whether or not that note indicates,
 10 pursuant to the DEA's understanding,
 11 whether or not this applies to all
 12 controlled substances, or just controlled
 13 substances that contain List I chemicals
 14 or some other interpretation that I'm
 15 missing?
 16 MS. MAINIGI: Objection.
 17 Form.
 18 Objection. Coaching the
 19 witness.
 20 MR. FINKELSTEIN: I object
 21 to the scope.
 22 But you can answer in your
 23 personal capacity, if you know.
 24 **THE WITNESS: Yes, I agree.**

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1 believe that this algorithm is
 2 appropriate for measuring as a metric
 3 suspicious orders of controlled
 4 substances that do not include List I
 5 chemicals?
 6 MR. EPPICH: Object to form.
 7 MS. MAINIGI: Objection.
 8 Scope.
 9 **THE WITNESS: Can you please**
 10 **repeat that.**
 11 BY MR. FARRELL:
 12 **Q. Yes. We agree that this**
 13 **document we're looking at from the Reno**
 14 **report is guidance from the DEA to**
 15 **registrants under the Methamphetamine Act**
 16 **regarding looking for orders of**
 17 **extraordinary size involving List I**
 18 **chemicals. That's been established. And**
 19 **I'm asking you whether or not you agree**
 20 **with it.**
 21 MR. FINKELSTEIN: Scope.
 22 MS. MAINIGI: Objection to
 23 form.
 24 MR. EPPICH: Objection.

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1 BY MR. FARRELL:
 2 Q. So the DEA agrees that this
 3 applies only to List I chemicals and
 4 controlled substances that contain List I
 5 chemicals, agreed?
 6 MR. FINKELSTEIN: Hang on.
 7 My instruction was you could ask
 8 Tom Prevoznik if he agrees,
 9 because this is not within the
 10 scope of his authorization.
 11 MS. SINGER: Though it does
 12 relate to guidance the DEA
 13 provided to registrants. That is
 14 the context in which defendants
 15 offered it yesterday.
 16 MR. FINKELSTEIN: I
 17 understand the defendants
 18 offered -- offered it yesterday.
 19 And I made the same objections
 20 there.
 21 This is about chemicals. We
 22 are talking about controlled
 23 substances. You can answer in
 24 your personal capacity.

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1 MR. FARRELL: Well, I -- I
 2 don't -- respectfully don't need
 3 his personal capacity. I need the
 4 DEA's position on whether or not
 5 the Reno report is --
 6 BY MR. FARRELL:
 7 Q. Let me ask you this. Let me
 8 ask you in a different way.
 9 Has the DEA ever provided
 10 guidance to a registrant that it is
 11 appropriate in the context of controlled
 12 substances, which do not include List I
 13 chemicals, to define suspicious orders as
 14 orders of extraordinary quantity?
 15 MR. EPPICH: Objection.
 16 Foundation.
 17 MS. MAINIGI: Objection.
 18 Form.
 19 THE WITNESS: Again, you
 20 used the word ever. I can't -- I
 21 don't know if that's never not
 22 happened.
 23 BY MR. FARRELL:
 24 Q. That's -- that's fair.

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1 MR. FINKELSTEIN: Scope.
 2 MS. MAINIGI: Objection.
 3 MR. EPPICH: Objection.
 4 Foundation.
 5 MR. FARRELL: You're right.
 6 This is -- is she back yet?
 7 Do we have the Cardinal
 8 Health documents yet?
 9 Let's take a quick break if
 10 you don't mind.
 11 MR. FINKELSTEIN: Okay. I'd
 12 like this to be our last break.
 13 And we're going to break for the
 14 day at 5.
 15 MR. FARRELL: Yeah.
 16 THE VIDEOGRAPHER: 3:35. We
 17 are off the video record.
 18 (Short break.)
 19 THE VIDEOGRAPHER: 3:49. We
 20 are on the video record.
 21 BY MR. FARRELL:
 22 Q. I'm going to try to go at
 23 this through a different route.
 24 I'm going to show you what

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1 Speaking on behalf of the
 2 DEA, do you believe that the Reno report
 3 is an appropriate standard to measure
 4 suspicious orders of controlled
 5 substances that do not contain List I
 6 chemicals?
 7 MS. MAINIGI: Objection.
 8 Scope. Foundation.
 9 MR. EPPICH: Form.
 10 THE WITNESS: Please repeat
 11 that.
 12 BY MR. FARRELL:
 13 Q. Has the DEA provided
 14 guidance to registrants that it can
 15 monitor suspicious orders of List I
 16 chemicals using the Reno report?
 17 A. Not to my knowledge.
 18 Q. I forgot what I asked you.
 19 (Whereupon, the court
 20 reporter read back the requested
 21 portion of testimony.)
 22 BY MR. FARRELL:
 23 Q. What is the purpose of the
 24 Reno report?

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1 has been premarked as Plaintiffs'
 2 Exhibit 12 to your deposition.
 3 (Document marked for
 4 identification as Exhibit
 5 DEA-Prevoznik-P-12.)
 6 MR. FARRELL: I have copies,
 7 four copies for counsel. I have a
 8 copy for the DOJ. And a copy for
 9 you.
 10 THE WITNESS: Thank you.
 11 BY MR. FARRELL:
 12 Q. And I'll represent to you
 13 that this is not a document that you've
 14 seen before.
 15 But this is Cardinal
 16 Health's Third Supplemental Objections
 17 and Responses to Plaintiffs' First
 18 Combined Discovery Requests served in
 19 this litigation.
 20 And I -- I'll give you a
 21 moment to get oriented with it. But
 22 eventually I'm going to be directing your
 23 attention to Page 12.
 24 Now, specifically what I'm

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1 going to reference you to on Page 12 is
 2 the last paragraph.
 3 And it -- and Cardinal
 4 Health says, "From at least 1995 through
 5 late 2007, Cardinal Health understood DEA
 6 to want suspicious orders reported to the
 7 administration in the form of ingredient
 8 limit reports."
 9 Do you see that?
 10 A. Yes.
 11 MS. MAINIGI: Objection to
 12 form.
 13 BY MR. FARRELL:
 14 Q. My question to you as the
 15 representative from the DEA, is, has the
 16 DEA ever provided guidance to Cardinal
 17 Health that it could -- that it could
 18 report suspicious orders through the use
 19 of ingredient limit reports?
 20 MS. MAINIGI: Objection.
 21 Scope. Objection. Form.
 22 Objection. Foundation.
 23 MR. FINKELSTEIN: I join the
 24 scope objection to the extent that

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1 MS. MAINIGI: Objection.
 2 Coaching the witness.
 3 BY MR. FARRELL:
 4 Q. And so the next sentence,
 5 could you read it aloud?
 6 A. "Based on guidance from the
 7 DEA, see example,
 8 CAH_MDL_PRIORPROD_HOUSE_0002207 --
 9 Q. Stop right there for a
 10 second. Do you recognize that Bates
 11 stamp number?
 12 A. Yes.
 13 Q. Where do you recognize that
 14 Bates stamp number from?
 15 A. The Reno report.
 16 Q. The exhibit that we just
 17 went over?
 18 A. That we referred -- yes,
 19 right.
 20 Q. So this is Cardinal Health
 21 representing in this litigation that it
 22 understood that it was based on guidance
 23 from the DEA using that Reno report.
 24 My question to you is, is

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1 it calls for guidance outside of
 2 the distributor initiative.
 3 BY MR. FARRELL:
 4 Q. You can answer.
 5 A. I'm just reading -- can I --
 6 Q. Absolutely.
 7 A. Again, I'm just getting
 8 familiar with it.
 9 Please repeat the question.
 10 Q. Yeah, what I'll do is I'll
 11 start over.
 12 The very first sentence,
 13 you'll see Cardinal Health represents
 14 from at least '95 through 2007, Cardinal
 15 Health understood DEA to want suspicious
 16 orders reported to the administration in
 17 the form of ingredient limit reports.
 18 Do you see that sentence?
 19 MS. MAINIGI: Objection to
 20 form.
 21 BY MR. FARRELL:
 22 Q. That's exactly what it says,
 23 correct?
 24 A. Yes.

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1 the DEA ever aware of providing such
 2 guidance to Cardinal Health?
 3 MS. MAINIGI: Objection.
 4 Form. Objection. Scope.
 5 Objection. Coaching the witness.
 6 THE WITNESS: Again, the use
 7 of ever, I don't -- I don't -- I
 8 don't know.
 9 BY MR. FARRELL:
 10 Q. Do you have any knowledge of
 11 providing such guidance to Cardinal
 12 Health?
 13 MS. MAINIGI: Objection.
 14 Asked and answered. Objection.
 15 Form. Scope.
 16 THE WITNESS: I am not
 17 aware.
 18 BY MR. FARRELL:
 19 Q. Will you continue reading?
 20 A. "Cardinal Health understood
 21 DEA to want orders for opioids reported
 22 that exceeded a calculation endorsed by
 23 DEA or that a wholesale distributor
 24 otherwise identified as unusual in size,

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1 pattern or frequency."
 2 Q. Are you aware of the DEA
 3 ever endorsing a calculation for opioids
 4 to identify orders of unusual size,
 5 pattern, or frequency?
 6 A. No.
 7 MS. MAINIGI: Objection.
 8 Form. Objection. Scope.
 9 BY MR. FARRELL:
 10 Q. Is it appropriate and
 11 compliant with federal law for a
 12 registrant to use the Reno report as the
 13 methodology in which it measures
 14 suspicious orders of opioids that do not
 15 contain List I chemicals?
 16 MS. MAINIGI: Objection.
 17 Calls for a legal conclusion.
 18 Form.
 19 MR. FINKELSTEIN: Vague.
 20 THE WITNESS: Well, the
 21 statute requires the registrant to
 22 design and operate the system.
 23 BY MR. FARRELL:
 24 Q. Let's be clear about which

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1 Q. It's one of the exhibits.
 2 Try 1310.05.
 3 A. .05 and what section? A-1.
 4 Q. A-1.
 5 A. "Extraordinary quantity of a
 6 listed chemical, an uncommon method of
 7 payment or delivery, or any other
 8 circumstance that the regulated person
 9 believes may indicate that the listed
 10 chemical will be used in violation of
 11 this part."
 12 Q. So my question to the DEA,
 13 is, did the DEA ever provide guidance to
 14 Cardinal Health that it could use the
 15 Reno report's definition of suspicious,
 16 which is extraordinary size, as the
 17 algorithm for measuring unusual orders of
 18 controlled substances?
 19 MS. MAINIGI: Objection.
 20 Scope, form.
 21 MR. FINKELSTEIN: Scope.
 22 THE WITNESS: Not to my
 23 knowledge.
 24 BY MR. FARRELL:

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1 statute we are talking about.
 2 A. Correct.
 3 Q. Which one are you reading
 4 from?
 5 A. I'm reading from the C.F.R.
 6 Q. For List I chemicals?
 7 A. Controlled substances.
 8 Q. Controlled substances. And
 9 how does it define suspicious orders?
 10 A. Again, "Suspicious orders
 11 include orders of unusual size, orders
 12 deviating substantially from a normal
 13 pattern, or" -- "and orders of unusual
 14 frequency."
 15 Q. Now, I'd like you to flip to
 16 List I chemicals. What is the DEA's rule
 17 on looking for suspicious orders of
 18 List I chemicals?
 19 MS. MAINIGI: Objection.
 20 Scope. Form.
 21 BY MR. FARRELL:
 22 Q. Do you have the C.F.R. or
 23 the --
 24 A. C.F.R.

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1 Q. This is Cardinal Health in
 2 its pleading in this litigation, telling
 3 the court that the DEA endorsed it to use
 4 the Reno report to monitor suspicious
 5 orders of controlled substances,
 6 including opioids. Is that statement
 7 true or not true?
 8 MS. MAINIGI: Objection.
 9 Form. Coaching witness. Scope.
 10 MR. FINKELSTEIN: Scope.
 11 THE WITNESS: Can you repeat
 12 the question?
 13 BY MR. FARRELL:
 14 Q. Cardinal Health is stating
 15 in its discovery responses to the court
 16 that the DEA provided guidance to them,
 17 that they could use the Reno report and
 18 its algorithm for orders of extraordinary
 19 size to identify unusual orders of
 20 controlled substances.
 21 Are you aware of the DEA
 22 providing such guidance to Cardinal
 23 Health?
 24 MS. MAINIGI: Objection.

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1 Form. Coaching the witness.
 2 Scope.
 3 MR. FINKELSTEIN: Scope.
 4 THE WITNESS: I am not
 5 aware.
 6 BY MR. FARRELL:
 7 Q. Is it the DEA's position
 8 that using an algorithm for extraordinary
 9 size is an appropriate measurement of
 10 orders of unusual size for controlled
 11 substances?
 12 MS. MAINIGI: Objection.
 13 Form.
 14 MR. EPPICH: Objection.
 15 Scope.
 16 MR. FINKELSTEIN: Form.
 17 THE WITNESS: No.
 18 BY MR. FARRELL:
 19 Q. In fact, in the Reno report,
 20 the DEA provided recommendation and
 21 guidance to registrants that it could
 22 look for orders of extraordinary size of
 23 List I chemicals using a factor of three.
 24 Is that correct?

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1 Paragraph 1, is this the guidance that
 2 the DEA was providing to registrants as
 3 the current calculation being used to
 4 look for orders of extraordinary size of
 5 List I chemicals?
 6 MR. EPPICH: Objection.
 7 Foundation.
 8 MR. FINKELSTEIN: Scope.
 9 THE WITNESS: Yes.
 10 BY MR. FARRELL:
 11 Q. So there appear to be five
 12 steps that DEA was providing guidance
 13 for, agreed?
 14 MR. EPPICH: Objection.
 15 Foundation. Form.
 16 THE WITNESS: Yes.
 17 BY MR. FARRELL:
 18 Q. And will you read paragraph
 19 Step 1?
 20 A. "Add purchase quantities for
 21 the last 12 months for all customers
 22 within same distribution center and for
 23 customer type (hospital, pharmacy or
 24 other) for any List I chemical-containing

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1 MR. EPPICH: Object to form.
 2 MS. MAINIGI: Objection
 3 scope.
 4 MR. FINKELSTEIN: Scope.
 5 THE WITNESS: Yes.
 6 BY MR. FARRELL:
 7 Q. Would it be appropriate for
 8 a registrant to use a factor of four to
 9 look for orders of unusual size of
 10 controlled substances?
 11 MS. MAINIGI: Objection.
 12 Foundation. Objection. Scope.
 13 MR. FINKELSTEIN: Incomplete
 14 hypothetical.
 15 MR. EPPICH: Objection.
 16 Form.
 17 THE WITNESS: I don't know.
 18 I don't know what factor three,
 19 factor four -- factor -- I don't
 20 know what those factors are.
 21 BY MR. FARRELL:
 22 Q. Okay. So let's go and look
 23 at page -- on the Reno report,
 24 Bates-stamped 2247. So if you look at

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1 item stocked by the distribution center."
 2 Q. So in Step 1, it appears
 3 that the guidance the DEA is providing is
 4 for a registrant to add the purchase
 5 quantities for the last 12 months by a
 6 customer of List I chemicals within the
 7 same distribution center for the same
 8 customer type, agreed?
 9 MR. FINKELSTEIN: Scope.
 10 MS. MAINIGI: Objection.
 11 Scope.
 12 MR. EPPICH: Objection.
 13 Form. Foundation.
 14 THE WITNESS: Yes.
 15 BY MR. FARRELL:
 16 Q. And then on Number 2, it
 17 says, "Add customer months for every
 18 record used in above total."
 19 Did I read that accurately?
 20 MR. EPPICH: Objection.
 21 Form and foundation.
 22 THE WITNESS: Yes.
 23 BY MR. FARRELL:
 24 Q. Step 3 is to divide that

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1 total quantity by the total customer
 2 months.
 3 Did I read that accurately?
 4 MR. EPPICH: Objection form
 5 and foundation.
 6 THE WITNESS: Yes.
 7 BY MR. FARRELL:
 8 Q. Very good. Now, once we do
 9 this math -- it's not so fuzzy -- what it
 10 gives us, is it gives us the average
 11 purchases by a customer per month for the
 12 past year, agreed?
 13 MR. EPPICH: Object to form.
 14 MR. FINKELSTEIN: Scope.
 15 THE WITNESS: Agreed.
 16 BY MR. FARRELL:
 17 Q. And then under Paragraph 4,
 18 it says multiply that by a factor. And
 19 that gives us the maximum amount that the
 20 customer can order per month before
 21 showing up on a suspicious order report.
 22 Do you see that?
 23 A. Yes.
 24 Q. So again, this is for List I

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1 factor should be for three, for
 2 Control II and Control III controlled
 3 substances containing List I chemicals."
 4 Do you see that?
 5 A. Yes.
 6 MR. EPPICH: Objection to
 7 form.
 8 BY MR. FARRELL:
 9 Q. Now, if it's just a pure
 10 List I chemical, and it doesn't
 11 contain -- I'm sorry, the other way
 12 around.
 13 If you take the factor of
 14 three for List I chemicals, it gives you
 15 the maximum amount before a suspicious
 16 order is triggered. That's the factor
 17 the DEA is recommending registrants use
 18 for List I chemicals.
 19 Agreed?
 20 MR. EPPICH: Object to form.
 21 MR. FINKELSTEIN: Scope.
 22 THE WITNESS: Agreed.
 23 BY MR. FARRELL:
 24 Q. Okay. So my question to you

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1 chemicals arising out of methamphetamine
 2 act and the guidance provided by the DEA
 3 to Attorney General Janet Reno, and the
 4 recommendation is that when you're
 5 looking for orders of extraordinary size
 6 of List I chemicals, ephedrine,
 7 pseudoephedrine, a registrant should look
 8 for like-size groups of customers from a
 9 distribution facility, add up the total
 10 by base weight over the past 12 months,
 11 divide it by 12, and multiply it by a
 12 factor. Agreed?
 13 MR. EPPICH: Objection to
 14 form.
 15 MS. MAINIGI: Objection to
 16 form. Mischaracterizes the
 17 report.
 18 MR. EPPICH: Objection.
 19 Foundation.
 20 MR. FINKELSTEIN: Scope.
 21 You can answer.
 22 THE WITNESS: Agreed.
 23 BY MR. FARRELL:
 24 Q. It says here, "The" -- "The

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1 is, is it appropriate to use this
 2 standard for controlled substances that
 3 don't include List I chemicals?
 4 MS. MAINIGI: Objection.
 5 Form. Foundation.
 6 MR. FINKELSTEIN: Can I get
 7 the question back?
 8 I'm sorry, because my
 9 realtime -- can you ask it again?
 10 (Whereupon, the court
 11 reporter read back the requested
 12 portion of testimony.)
 13 MR. FINKELSTEIN: Okay. You
 14 can answer.
 15 THE WITNESS: Can you repeat
 16 it?
 17 MR. FINKELSTEIN: Can you
 18 repeat it?
 19 BY MR. FARRELL:
 20 Q. By using this methodology,
 21 you are providing guidance to registrants
 22 to identify extraordinary orders of
 23 List I chemicals by using a multiplier of
 24 three times the monthly average for a

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1 similar customer.
 2 Is that fair?
 3 MR. EPPICH: Object to the
 4 form.
 5 MS. MAINIGI: Objection.
 6 Form. Foundation.
 7 THE WITNESS: Correct.
 8 BY MR. FARRELL:
 9 Q. Has the DEA provided
 10 guidance to registrants of controlled
 11 substances that don't include List I
 12 chemicals that it can multiply the
 13 monthly average by three to identify
 14 orders that are merely unusual?
 15 MS. MAINIGI: Objection.
 16 Foundation. Form.
 17 MR. EPPICH: Objection.
 18 Scope.
 19 THE WITNESS: Not to my
 20 knowledge.
 21 BY MR. FARRELL:
 22 Q. So if you're using a
 23 measuring stick that the DEA has
 24 provided --

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1 question isn't about industrywide
 2 guidance. I join the scope
 3 objection.
 4 BY MR. FARRELL:
 5 Q. Let me try it again then.
 6 Has the DEA ever provided
 7 industrywide guidance that it could use
 8 the definition of suspicious order for
 9 the List I chemicals under the
 10 methamphetamine act for orders of
 11 controlled substances that do not include
 12 List I chemicals?
 13 A. Not to my knowledge.
 14 MS. MAINIGI: Objection to
 15 form.
 16 BY MR. FARRELL:
 17 Q. So now let's go back to
 18 Cardinal's combined discovery requests.
 19 Page 12.
 20 In the context of the first
 21 sentence, has the DEA ever provided
 22 guidance to registrants, which are, in
 23 this case, distributors of Control II
 24 prescription opioids, that it satisfies

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1 MS. MAINIGI: May I ask for
 2 clarification, Counsel? Is that
 3 to your personal knowledge?
 4 MR. FARRELL: Enu, you --
 5 you can have redirect. He's
 6 testifying in his official
 7 capacity, so --
 8 MR. FINKELSTEIN: I'll say
 9 he's here to testify about
 10 industrywide guidance, and I took
 11 the question in that spirit.
 12 And you can ask -- you can
 13 ask your next question.
 14 BY MR. FARRELL:
 15 Q. So if -- if a registrant is
 16 making -- are you aware of ever making --
 17 providing guidance to a registrant that
 18 it could use the Reno report as an
 19 effective tool to monitor suspicious
 20 orders of controlled substances that
 21 don't include List I chemicals?
 22 MS. MAINIGI: Objection.
 23 Form. Foundation. Scope.
 24 MR. FINKELSTEIN: That

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1 its compliance obligations under federal
 2 law by submitting after-the-fact
 3 ingredient limit reports?
 4 MS. MAINIGI: Objection.
 5 Form. Objection. Foundation.
 6 MR. FINKELSTEIN: Scope.
 7 THE WITNESS: Not to my
 8 knowledge.
 9 BY MR. FARRELL:
 10 Q. Now, you'll recall from the
 11 1996 diversion investigators manual, if
 12 you'll flip back to it, which is
 13 Exhibit 11.
 14 A. I'll use mine. The '96 one?
 15 Q. The '96 one.
 16 Is there any reference to
 17 an -- an approved factor to be used by a
 18 registrant to identify unusual orders of
 19 controlled substances?
 20 MS. MAINIGI: Objection --
 21 excuse me. Objection to form.
 22 THE WITNESS: No.
 23 BY MR. FARRELL:
 24 Q. If a registrant used a

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1 factor to increase -- that's a bad
 2 question.
 3 Are you aware of the DEA
 4 ever endorsing the use of a factor to use
 5 in the calculation of unusual orders of
 6 controlled substances that do not include
 7 List I chemicals?
 8 MR. EPPICH: Objection to
 9 form.
 10 MR. FINKELSTEIN: Scope.
 11 THE WITNESS: Again, it's
 12 the use of the word ever.
 13 I am not -- I am not aware,
 14 but I have concerns of the word of
 15 the use ever.
 16 BY MR. FARRELL:
 17 Q. Is a registrant that uses
 18 the factor when calculating orders of
 19 unusual size of controlled substances
 20 that do not include List I chemicals,
 21 compliant with federal regulations?
 22 MR. STEPHENS: Object to
 23 form.
 24 MR. FINKELSTEIN: Calls for

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1 knowledge.
 2 BY MR. FARRELL:
 3 Q. Now, in -- in other places
 4 I'll represent to you that some
 5 registrants of controlled substances that
 6 do not include List I chemicals are
 7 relying upon the chemical handlers
 8 manual. That fact will be established in
 9 the record.
 10 So my question to you first
 11 is, are you familiar with the DEA's
 12 chemical handlers manual?
 13 MS. MAINIGI: Objection.
 14 Coaching the witness. Objection
 15 to form.
 16 MR. EPPICH: Object to form.
 17 THE WITNESS: Yes.
 18 BY MR. FARRELL:
 19 Q. I'm going to show you what's
 20 going to be marked as?
 21 MR. FINKELSTEIN: 13.
 22 MR. FARRELL: So what did
 23 you say?
 24 MR. FINKELSTEIN: 13. I

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1 a legal conclusion.
 2 MS. MAINIGI: Join.
 3 THE WITNESS: Could you
 4 please repeat it?
 5 BY MR. FARRELL:
 6 Q. Would the DEA ever endorse a
 7 methodology for use by a registrant that
 8 multiplied a monthly average by four to
 9 determine orders of unusual size?
 10 MR. EPPICH: Object to form.
 11 Foundation.
 12 MS. MAINIGI: Calls for
 13 speculation.
 14 THE WITNESS: DEA doesn't
 15 endorse the systems.
 16 BY MR. FARRELL:
 17 Q. Is using a factor of four
 18 when calculating orders of unusual size
 19 compliant with federal regulations
 20 according to the DEA?
 21 MS. MAINIGI: Objection.
 22 Calls for a legal conclusion.
 23 Form.
 24 THE WITNESS: Not to my

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1 think it's 13.
 2 (Document marked for
 3 identification as Exhibit
 4 DEA-Prevoznik-P-13.)
 5 BY MR. FARRELL:
 6 Q. 13? Plaintiffs' 13. And it
 7 is Bates stamped
 8 CAH_MDL_PRIORPROD_DEA07_01198690.
 9 I'll hand that to you.
 10 MR. FARRELL: I've got
 11 insufficient number of copies.
 12 Bonnie will be e-mailing it around
 13 as well.
 14 BY MR. FARRELL:
 15 Q. I'll give you a moment to
 16 review it. And my first question is
 17 going to be is whether or not you
 18 recognize this document.
 19 A. Yes, I recognize it.
 20 Q. What is it?
 21 A. It's a manual that we put
 22 together for those that are handling
 23 List I chemicals.
 24 Q. Is it publicly available?

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1 A. Yes.
 2 Q. And is this a true and
 3 accurate version of the 2004 chemical
 4 handler's manual published by the DEA?
 5 MR. FINKELSTEIN: Scope.
 6 MS. MAINIGI: Objection to
 7 form.
 8 **THE WITNESS: Yes.**
 9 **BY MR. FARRELL:**
 10 **Q. Again, is this a document**
 11 **that applies to List I chemicals,**
 12 **including ephedrine and pseudoephedrine**
 13 **and the chemicals used to make**
 14 **methamphetamine?**
 15 **A. Yes.**
 16 MS. MAINIGI: Objection to
 17 form.
 18 MR. FINKELSTEIN: Scope.
 19 BY MR. FARRELL:
 20 Q. Does the DEA provide
 21 guidance that this document is an
 22 appropriate reference point for
 23 monitoring suspicious orders of
 24 controlled substances that do not include

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1 for illicit purposes, good practice
 2 requires that every reasonable effort be
 3 made to resolve those suspicions. In
 4 addition to making the required reports,
 5 the transaction should not be completed
 6 until the customer is able to eliminate
 7 the suspicions. The distributor may have
 8 to forego some transactions. When DEA
 9 reviews distributors' decisions, minor
 10 events are not cause for government
 11 action.
 12 "At the same time, a
 13 regulated person who fails to implement a
 14 system to prevent diversion will be
 15 closely scrutinized and, if warranted,
 16 may be subject to civil, administrative,
 17 or criminal penalties."
 18 Q. So with regard to List I
 19 chemicals that a registrant determines
 20 that are suspicious, what guidance has
 21 the DEA provided on whether or not the
 22 order should be shipped?
 23 MS. MAINIGI: Objection.
 24 Scope. Foundation.

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1 List I chemicals?
 2 MR. EPPICH: Objection.
 3 MS. MAINIGI: Objection to
 4 form.
 5 MR. FINKELSTEIN: Scope.
 6 THE WITNESS: No.
 7 BY MR. FARRELL:
 8 Q. Now, I'm going to have you
 9 flip to Bates stamp 01198713 which is
 10 Page 19. I'm going to have you go down
 11 and look first at the third full
 12 paragraph.
 13 MR. FINKELSTEIN: "When a
 14 regulated person suspects?"
 15 MR. FARRELL: Yes, sir.
 16 BY MR. FARRELL:
 17 Q. At the top of the page,
 18 you'll see it says, "Recognizing
 19 suspicious orders." And then I'm going
 20 to ask you to read the first -- read the
 21 paragraph that begins, "When a regulated
 22 person."
 23 A. "When a regulated person
 24 suspects that an order may be intended

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1 THE WITNESS: That they
 2 should not do it.
 3 BY MR. FARRELL:
 4 Q. So is this consistent with
 5 the guidance that the DEA provided to
 6 registrants of controlled substances that
 7 do not include List I chemicals?
 8 MS. MAINIGI: Objection.
 9 Vague. Timing.
 10 THE WITNESS: Yes.
 11 BY MR. FARRELL:
 12 Q. Now, you'll see directly
 13 above that, there's a reference to
 14 Exhibit E. So I'm going to have you flip
 15 to Page 41, which is Bates-stamped
 16 01198735.
 17 Now, if you look at the top
 18 left-hand corner there's an appendix
 19 number, Appendix E-3.
 20 A. I see that.
 21 Q. And when you read the
 22 language of Appendix E-3, does this track
 23 the language from the Reno report?
 24 MS. MAINIGI: Objection.

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1 Scope, form, foundation.
 2 MR. FINKELSTEIN: Scope.
 3 THE WITNESS: Yes.
 4 BY MR. FARRELL:
 5 Q. So if a registrant of --
 6 that is a wholesale distributor of
 7 controlled substances that do not include
 8 List I chemicals is using E-3 to identify
 9 suspicious orders of unusual size,
 10 frequency, or pattern, is that compliant
 11 with federal law?
 12 MS. MAINIGI: Objection.
 13 Calls for a legal conclusion.
 14 Form.
 15 MR. FINKELSTEIN: Calls for
 16 a legal conclusion.
 17 THE WITNESS: Please repeat.
 18 BY MR. FARRELL:
 19 **Q. If a registrant that is a**
 20 **wholesale distributor of controlled**
 21 **substances, excluding those that contain**
 22 **List I chemicals, is using E-3 to**
 23 **identify suspicious orders of unusual**
 24 **size, frequency or pattern, is that**

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1 to take a look at. And tell me if you
 2 recognize this document.
 3 A. Yes.
 4 Q. What is it?
 5 A. It's a letter that DEA sent
 6 to the distributors, registrants, by
 7 Joe -- by Joe Rannazzisi who was the head
 8 of the diversion program of DEA, it's
 9 dated September 27th, 2006.
 10 Q. Is this a true and accurate
 11 copy of the letter sent by the DEA to all
 12 registrants in the chain of distribution
 13 of controlled substances?
 14 A. Yes.
 15 Q. Can you verify and validate
 16 that this letter was sent to every
 17 wholesale distributor and manufacturer
 18 that sells or distributes controlled
 19 substances and are registered with the
 20 DEA?
 21 MR. STEPHENS: Object to
 22 form.
 23 MR. EPPICH: Object to form.
 24 Objection. Foundation.

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1 **compliant with federal law, according to**
 2 **the DEA?**
 3 MR. EPPICH: Object to form.
 4 MS. MAINIGI: Objection.
 5 Calls for a legal conclusion.
 6 Form.
 7 THE WITNESS: No.
 8 BY MR. FARRELL:
 9 Q. So I'm going to make this
 10 easier. I'm going to mark as the next
 11 sequential exhibit, which is Plaintiffs'
 12 Exhibit --
 13 A. Oh, right, 14.
 14 Q. I'm terrible at exhibit
 15 numbers.
 16 (Document marked for
 17 identification as Exhibit
 18 DEA-Prevoznik-P-14.)
 19 BY MR. FARRELL:
 20 Q. And to make it easier for
 21 everybody, this is from the DEA reliance
 22 materials that were circulated yesterday.
 23 This is the DEA's letter dated
 24 September 27th, 2006, that I'll ask you

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1 MR. O'CONNOR: Objection to
 2 form.
 3 MS. MAINIGI: Objection.
 4 THE WITNESS: There were
 5 actually two mailings of this.
 6 This was one, and then there was
 7 one in February. So it did go out
 8 to all of them.
 9 BY MR. FARRELL:
 10 Q. So did they go out to all --
 11 let me back up.
 12 What was the purpose of the
 13 February letter?
 14 A. It was the same. It was the
 15 same letter, but to make sure that all
 16 the wholesalers got it.
 17 Q. So the same letter was sent
 18 twice?
 19 A. Yes.
 20 Q. And to the DEA's knowledge,
 21 was there a shortcoming on the first
 22 distribution of the letter, or why did
 23 you send it out a second time?
 24 MS. MAINIGI: Object to

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1 form.
 2 THE WITNESS: I'm not sure.
 3 BY MR. FARRELL:
 4 Q. But you know it was sent out
 5 twice?
 6 A. Yes.
 7 Q. Can you validate and affirm
 8 that the DEA sent this letter to every
 9 wholesale distributor of prescription
 10 opioids that are registered with the DEA?
 11 MS. MAINIGI: Objection.
 12 Scope, form, foundation.
 13 MR. EPPICH: Objection to
 14 form.
 15 THE WITNESS: Back at this
 16 time?
 17 BY MR. FARRELL:
 18 Q. Yes.
 19 A. Yes.
 20 Q. What about to manufacturers?
 21 A. This did not go to the
 22 manufacturers.
 23 Q. Just to the distributors?
 24 A. Correct.

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1 BY MR. FARRELL:
 2 Q. Do you recognize this
 3 document?
 4 A. It's the same one that you
 5 just gave me.
 6 Q. I meant to give you the 2006
 7 version.
 8 MR. FINKELSTEIN: You did
 9 give him the 2006 version.
 10 MR. FARRELL: I just did it
 11 again with 2006, huh?
 12 MR. FINKELSTEIN: Correct.
 13 BY MR. FARRELL:
 14 Q. Previously been marked as
 15 Exhibit 5 in yesterday's deposition. And
 16 I'm going to try to find a clean copy.
 17 Now, I'm going to ask you the same
 18 question.
 19 Is this a true and accurate
 20 copy of the second Rannazzisi letter sent
 21 by the DEA to wholesale distributors of
 22 prescription opioids dated December 27,
 23 2007?
 24 A. It went to manufacturers and

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1 Q. So without belaboring the
 2 point in going through this, is it the
 3 DEA's position that anything in that
 4 letter is a new rule?
 5 MS. MAINIGI: Objection.
 6 Form.
 7 MR. FINKELSTEIN: Vague.
 8 THE WITNESS: No.
 9 BY MR. FARRELL:
 10 Q. I'm going to ask you the
 11 same questions. I'm going to have
 12 marked -- the 2007 letter that's in my
 13 book from reliance materials is just one
 14 page.
 15 So I'm going to have marked
 16 as the next sequential exhibit, which is
 17 Plaintiffs' 15.
 18 (Document marked for
 19 identification as Exhibit
 20 DEA-Prevoznik-P-15.)
 21 MR. FARRELL: Document
 22 bearing Bates stamp
 23 US-DEA-00022459. And I'm going to
 24 hand it to you.

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1 distributors.
 2 Q. This one did?
 3 A. Yes.
 4 Q. Is -- is this a true and
 5 accurate copy of that letter?
 6 A. Yes.
 7 Q. Does the DEA believe that
 8 there's anything in this letter that
 9 constitutes a new rule?
 10 A. No.
 11 MS. MAINIGI: Objection to
 12 form.
 13 MR. FARRELL: Bear with me
 14 for a second, please.
 15 All right. So the next
 16 thing that I'm going to show you
 17 is the testimony from Cardinal
 18 Health's 30(b)(6) deponent. And
 19 then after we show you the video
 20 clip I'm going to ask you a
 21 question.
 22 Go ahead and play Norris.
 23 (Video clip played as
 24 follows:)

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1 NORRIS: This letter sets
 2 forth the obligations --
 3 (Video stopped.)
 4 MR. FARRELL: Can you stop
 5 it. Start it.
 6 I'm sorry, we had a little
 7 technical gaffe.
 8 (Video clip played as
 9 follows:)
 10 MR. FARRELL: So as of
 11 September 27, 2006, you
 12 acknowledge that this letter sets
 13 forth the obligations under the
 14 Controlled Substances Act and
 15 under the code of federal
 16 regulations for Cardinal Health?
 17 MS. MAINIGI: Objection.
 18 Scope. Objection. Form.
 19 THE WITNESS: As to the
 20 reiteration of the reporting
 21 requirement, yes.
 22 Again, the shipping
 23 requirement, to use short form,
 24 was a new -- new idea to Cardinal

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1 the direction we received from the
 2 DEA. We made the reports as
 3 required and there was not a
 4 shipping requirement.
 5 (Video concluded.)
 6 BY MR. FARRELL:
 7 Q. So my question to you is, is
 8 did the DEA ever provide such instruction
 9 to a registrant?
 10 MS. MAINIGI: Outside --
 11 objection. Outside the scope.
 12 Objection. Form.
 13 MR. EPPICH: Objection.
 14 Foundation.
 15 MR. FINKELSTEIN: Scope.
 16 THE WITNESS: Could you
 17 please repeat it?
 18 BY MR. FARRELL:
 19 Q. Did the DEA ever provide
 20 guidance to a registrant that it could
 21 report a suspicious order and then still
 22 ship it?
 23 MS. MAINIGI: Objection.
 24 Scope. Objection. Form and

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1 Health at the time they received
 2 this letter. So it was not -- I
 3 do not agree that that was an
 4 obligation in the statute going
 5 back."
 6 (Video concluded.)
 7 MR. FARRELL: Play the next
 8 one, please.
 9 MS. MAINIGI: Is there a
 10 question, Mr. Farrell?
 11 Just an ongoing objection to
 12 just playing video from Cardinal
 13 Health's 30(b)(6).
 14 (Video clip played as
 15 follows:)
 16 MR. FARRELL: During this
 17 time frame prior to 2007, did
 18 Cardinal report orders as
 19 potentially suspicious or
 20 suspicious orders, and then still
 21 send the shipments out?
 22 MS. MAINIGI: Objection.
 23 Time period.
 24 THE WITNESS: Yes, that is

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1 foundation.
 2 MR. EPPICH: Scope.
 3 BY MR. FARRELL:
 4 Q. All right. So let me repeat
 5 it.
 6 **Cardinal Health claims that**
 7 **it received direction from the DEA that**
 8 **it could report suspicious orders and**
 9 **then still ship it.**
 10 **Is the DEA aware of**
 11 **providing such guidance?**
 12 MS. MAINIGI: Objection.
 13 Scope. Objection. Form.
 14 Objection. Misstates Cardinal
 15 Health testimony. Vague as to
 16 time.
 17 **THE WITNESS: Not to my**
 18 **knowledge.**
 19 BY MR. FARRELL:
 20 Q. Does the DEA take the
 21 position that a registrant of controlled
 22 substances has a duty to block shipment
 23 of suspicious orders of controlled
 24 substances?

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1 MS. MAINIGI: Objection.
 2 Form. Objection. Vague as to
 3 time.
 4 THE WITNESS: Can you please
 5 repeat it?
 6 BY MR. FARRELL:
 7 Q. Does the DEA take the
 8 position that a registrant of controlled
 9 substances has a duty to block shipments
 10 of suspicious orders?
 11 MS. MAINIGI: Objection.
 12 Form. Objection. Vague as to
 13 time.
 14 **THE WITNESS: Yes.**
 15 **BY MR. FARRELL:**
 16 **Q. Is that now and always been**
 17 **the law in the United States of America?**
 18 MS. MAINIGI: Objection.
 19 Form. Outside the scope.
 20 **THE WITNESS: Yes.**
 21 BY MR. FARRELL:
 22 Q. And if a registrant says
 23 that it was allowed to ship suspicious
 24 orders, is that -- has that ever been

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1 identification as Exhibit
 2 DEA-Prevoznik-P-16.)
 3 MR. FARRELL: And for
 4 everybody's reference, I'm -- I'm
 5 referring to the Novelty
 6 Distributors, Inc., revocation of
 7 registration, Federal Register
 8 Volume 73, Number 176, dated
 9 September 10, 2008.
 10 I believe it was referenced
 11 yesterday at some point in time.
 12 BY MR. FARRELL:
 13 Q. Do you recognize the form of
 14 this document?
 15 A. Yes.
 16 Q. What is it?
 17 A. It's a Federal Register of
 18 notice.
 19 Q. And what is the date of it?
 20 A. Wednesday, September 10,
 21 2008.
 22 Q. Is this a publication that
 23 is available to the general public?
 24 A. Yes.

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1 blessed by the DEA?
 2 MS. MAINIGI: Objection.
 3 Form. Objection. Scope.
 4 MR. FINKELSTEIN: Scope.
 5 MR. EPPICH: Objection.
 6 Hypothetical.
 7 THE WITNESS: Please repeat
 8 it.
 9 BY MR. FARRELL:
 10 **Q. Okay. You saw the testimony**
 11 **from Cardinal Health.**
 12 **Do you believe the testimony**
 13 **is accurate?**
 14 MS. MAINIGI: Objection.
 15 Form. Objection. Scope.
 16 MR. EPPICH: Objection.
 17 Vague.
 18 **THE WITNESS: No.**
 19 BY MR. FARRELL:
 20 Q. I apologize, I don't have --
 21 I've got a copy for you. And I've got
 22 a -- that I'll mark as Plaintiffs'
 23 Exhibit 16.
 24 (Document marked for

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1 Q. Is this a true and accurate
 2 copy of the revocation of registration of
 3 a wholesale distributor published by the
 4 Drug Enforcement Agency?
 5 MS. MAINIGI: Objection.
 6 Scope.
 7 MR. FINKELSTEIN: Join the
 8 scope objection.
 9 THE WITNESS: Yes.
 10 BY MR. FARRELL:
 11 Q. I'm going to direct your
 12 attention now to Bates -- or the page
 13 Number 52699. In the top right-hand
 14 corner. In the middle paragraph of the
 15 middle column. And I'd ask you to read
 16 aloud the highlighted section.
 17 A. "Fundamental to its
 18 obligation to maintain effective controls
 19 against diversion, a distributor must
 20 review every order and identify
 21 suspicious transactions. Further, it
 22 must do so prior to shipping the
 23 products. Indeed, a distributor has an
 24 affirmative duty to forgo a transaction

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1 if, upon investigation, it is unable to
 2 determine that the proposed transaction
 3 is for legitimate purposes. See DEA
 4 chemical handler's manual 21.
 5 "Respondents procedure of
 6 post-transaction review is incompatible
 7 with its obligation to identify and
 8 forego suspicious transactions."
 9 Q. Is this consistent with the
 10 guidance the DEA provided to registrants?
 11 MS. MAINIGI: Objection.
 12 Vague as to time period and scope.
 13 THE WITNESS: Yes.
 14 BY MR. FARRELL:
 15 Q. Is this consistent with the
 16 2006 and 2007 letters sent by the DEA,
 17 authored by Joe Rannazzisi, to
 18 registrants that are involved in the
 19 closed system of controlled substances?
 20 MS. MAINIGI: Objection to
 21 form.
 22 MR. FINKELSTEIN: I object
 23 to the pronunciation of his name.
 24 But you can answer.

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1 final point.
 2 I think I'm going to ask for
 3 relief to continue the deposition
 4 until we get back together again.
 5 Ten till 5:00.
 6 MR. FINKELSTEIN: Okay.
 7 MR. FARRELL: With your
 8 permission, we'll adjourn until
 9 Day 3.
 10 MR. FINKELSTEIN: Well, we
 11 will certainly adjourn. I
 12 understand the parties are going
 13 to demand a Day 3.
 14 THE VIDEOGRAPHER: 4:50. We
 15 are off the video record.
 16 (Excused.)
 17 (Deposition adjourned at
 18 approximately 4:50 p.m.)
 19
 20
 21
 22
 23
 24

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1 THE WITNESS: I would
 2 clarify that it went to -- the
 3 first one went to distributors.
 4 And the 2007 went to manufacturers
 5 and distributors. So yes.
 6 BY MR. FARRELL:
 7 Q. Now, go to the very next
 8 portion. I'm going to reference a
 9 footnote.
 10 A. Same page?
 11 Q. No. It is 52702. It's
 12 Footnote 52, I believe.
 13 A. Okay. I see it.
 14 Q. And over on the very last
 15 thing, it says, "Moreover, field
 16 personnel may approve the renewal of a
 17 registration" --
 18 Wait a minute.
 19 It says -- can I see my copy
 20 back real quick?
 21 MR. FARRELL: You can take
 22 that down for a second. I
 23 apologize. We're running out of
 24 clock, but I want to get to one

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1
 2 CERTIFICATE
 3
 4
 5 I HEREBY CERTIFY that the witness was duly sworn by me
 6 and that the deposition is a true record of the testimony given by the
 7 witness.
 8 It was requested before
 9 completion of the deposition that the witness, THOMAS
 10 PREVOZNIK, have the
 11 opportunity to read and sign the deposition transcript.
 12
 13 _____ MICHELLE L.
 14 GRAY,
 15 A. Registered Professional Reporter, Certified Shorthand
 16 Reporter, Certified Realtime Reporter and Notary Public
 17 Dated: April 22, 2019
 18
 19 (The foregoing certification
 20 of this transcript does not apply to any
 21 reproduction of the same by any means,
 22 unless under the direct control and/or
 23 supervision of the certifying reporter.)
 24

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1 INSTRUCTIONS TO WITNESS
 2
 3 Please read your deposition
 4 over carefully and make any necessary
 5 corrections. You should state the reason
 6 in the appropriate space on the errata
 7 sheet for any corrections that are made.
 8 After doing so, please sign
 9 the errata sheet and date it.
 10 You are signing same subject
 11 to the changes you have noted on the
 12 errata sheet, which will be attached to
 13 your deposition.
 14 It is imperative that you
 15 return the original errata sheet to the
 16 deposing attorney within thirty (30) days
 17 of receipt of the deposition transcript
 18 by you. If you fail to do so, the
 19 deposition transcript may be deemed to be
 20 accurate and may be used in court.
 21
 22
 23
 24

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1
 2 ACKNOWLEDGMENT OF DEPONENT
 3
 4 I, _____, do
 5 hereby certify that I have read the
 6 foregoing pages, 410 - 782, and that the
 7 same is a correct transcription of the
 8 answers given by me to the questions
 9 therein propounded, except for the
 10 corrections or changes in form or
 11 substance, if any, noted in the attached
 12 Errata Sheet.
 13
 14
 15 _____
 16 THOMAS PREVOZNIK DATE
 17
 18
 19 Subscribed and sworn to before me this
 20 ____ day of _____, 20____.
 21 My commission expires: _____
 22 _____
 23 Notary Public
 24

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1 - - - - - E R R A T A
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 4 PAGE LINE CHANGE
 5 _____
 6 REASON: _____
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1 LAWYER'S NOTES
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1 UNITED STATES DISTRICT COURT FOR THE NORTHERN
 2 DISTRICT OF OHIO
 3 EASTERN DIVISION
 4 IN RE: NATIONAL)
 5 PRESCRIPTION) MDL No. 2804 OPIATE LITIGATION)
 6) Case No.) 1:17-MD-2804
 7) THIS DOCUMENT RELATES) Hon. Dan A.
 8 TO ALL CASES) Polster
 9 FRIDAY, MAY 17, 2019
 10 HIGHLY CONFIDENTIAL SUBJECT TO FURTHER
 11 CONFIDENTIALITY REVIEW
 12 Videotaped deposition of Thomas
 13 Prevoznik, Volume III, held at the offices of
 14 WILLIAMS & CONNOLLY LLP, 725 Twelfth Street,
 15 NW, Washington, DC, commencing at 8:10 a.m.,
 16 on the above date, before Carrie A. Campbell,
 17 Registered Diplomat Reporter and Certified
 18 Realtime Reporter.
 19
 20
 21
 22 GOLKOW LITIGATION SERVICES
 23 877.370.3377 ph | 917.591.5672 fax deps@golkow.com
 24

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Prevoznik, Thomas

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 28

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 14 US-DEA-00000147 - US-DEA-00000164
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 18 ABDCMDL00315827
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 20 W. Buzzeo to Jodi
 21 Avergun, CAH_MDL2804_03309960 -
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1 EXAMINATION (continued)
 2 QUESTIONS BY MR. FARRELL:
 3 Q. Good morning.
 4 A. Good morning.
 5 Q. Welcome back to day three of
 6 your deposition, Mr. Prevoznik.
 7 I'll remind you or let me ask
 8 you to recall that today you'll be testifying
 9 on behalf of the United States Drug
 10 Enforcement Administration, the DEA, on
 11 subject matters that have been requested in
 12 this litigation.
 13 Continuing the line of
 14 discussion, I'm going to -- I have marked,
 15 premarked, and am showing you Plaintiff's
 16 Exhibit 17, and the first thing I'd like to
 17 do is I'd like to direct your attention to
 18 the bottom right-hand corner.
 19 And you see the numbers
 20 US-DEA-00025656?
 21 A. Yes, I do.
 22 Q. I'll represent to you that's a
 23 Bate stamp number provided by the Department
 24 of Justice. And what I wanted to do was to
 25 lay a little foundation on the documents that

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1 VIDEOGRAPHER: We are now on
 2 the record. My name is Dan Lawlor.
 3 I'm a videographer with Golkow
 4 Litigation Services.
 5 Today's date is May 17, 2019,
 6 and the time is 8:10 a.m.
 7 This video deposition is being
 8 held in Washington, DC, in the matter
 9 of National Prescription Opiate
 10 Litigation, MDL Number 2804.
 11 The deponent is Thomas
 12 Prevoznik.
 13 Counsel will be noted on the
 14 stenographic record.
 15 The court reporter is Carrie
 16 Campbell and will now swear in the
 17 witness.
 18
 19 THOMAS PREVOZNIK,
 20 of lawful age, having been first duly sworn
 21 to tell the truth, the whole truth and
 22 nothing but the truth, deposes and says on
 23 behalf of the Plaintiffs, as follows:
 24 (Prevoznik Plaintiff Exhibit
 25 P17 marked for identification.

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1 bear such a Bate stamp.
 2 The DEA has produced through
 3 the United States Department of Justice more
 4 than 6,000 documents in this litigation
 5 spanning more than 26,000 pages.
 6 Do you acknowledge as the
 7 representative of the DEA that all such
 8 documents bearing the US DEA Bates stamp are,
 9 in fact, true and accurate photocopies of
 10 documents in the possession, custody and
 11 control of the DEA?
 12 A. Yes.
 13 Sorry.
 14 MR. FINKELSTEIN: Tom. Scope.
 15 You can answer.
 16 MR. EPPICH: Objection.
 17 Foundation.
 18 THE WITNESS: Yes.
 19 QUESTIONS BY MR. FARRELL:
 20 Q. And the DEA is, in fact, the
 21 custodian of these documents?
 22 MR. FINKELSTEIN: Scope.
 23 MR. O'CONNOR: Objection.
 24 Foundation.
 25 THE WITNESS: Yes.

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1 QUESTIONS BY MR. FARRELL:
 2 Q. So as the DEA, you acknowledge
 3 that the documents produced by the Department
 4 of Justice bearing this Bates stamp number
 5 are documents that come from the DEA which
 6 are held in the usual course of the regularly
 7 conducted activity of the DEA?
 8 MR. FINKELSTEIN: Scope.
 9 MR. EPPICH: Objection.
 10 Foundation.
 11 MR. O'CONNOR: Objection.
 12 MR. FINKELSTEIN: You can
 13 answer.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MR. FARRELL:
 16 Q. All right. Moving to the first
 17 document, P17.
 18 Do you recognize this document?
 19 And this isn't Jeopardy. This document
 20 actually was included in your reliance
 21 materials.
 22 But could you tell the jury
 23 what this document is?
 24 A. This document is a report based
 25 off of a meeting, a conference that was held

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1 DEA back at this time. I don't know what his
 2 specific title was back then.
 3 Q. You'll see that in the
 4 provision on the demonstrative that I've
 5 highlighted, the last sentence of the first
 6 paragraph, would you please read that into
 7 the record?
 8 MR. FINKELSTEIN: Starting with
 9 "another area" or somewhere else?
 10 MR. FARRELL: No, right above
 11 it. The last sentence of that first
 12 paragraph.
 13 THE WITNESS: The NWA?
 14 QUESTIONS BY MR. FARRELL:
 15 Q. Yes, sir.
 16 A. "The NWA system, for example,
 17 provide an excellent look-back, or trend
 18 system, but the ability to identify one-time
 19 suspicious orders should not be overlooked as
 20 an element of a program."
 21 Q. Is that consistent with the
 22 guidance the DEA has provided manufacturers
 23 and distributors regarding their obligations
 24 under the Controlled Substances Act and the
 25 regulations promulgated by the DEA?

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1 for manufacturers and wholesalers that we
 2 sponsor.
 3 Q. And what is the date?
 4 A. April 7th through the 9th,
 5 1987.
 6 Q. I'm going to have you flip to
 7 the very back page of the four-page document
 8 that was provided by the DEA, and you'll see
 9 there that there is a provision that talks
 10 about excessive order monitoring program.
 11 Is this a document that was
 12 prepared by the DEA?
 13 MR. EPPICH: Objection.
 14 Foundation.
 15 THE WITNESS: Yes.
 16 QUESTIONS BY MR. FARRELL:
 17 Q. So when you're reading this on
 18 behalf of the DEA, the very first sentence
 19 referenced the fact that the program was
 20 chaired by Ronald Buzzeo.
 21 Does the DEA know Ronald
 22 Buzzeo?
 23 A. Yes.
 24 Q. Who is Ronald Buzzeo?
 25 A. He was a senior manager within

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1 MR. EPPICH: Object to form.
 2 MS. MAINIGI: Objection.
 3 THE WITNESS: Yes.
 4 QUESTIONS BY MR. FARRELL:
 5 Q. Okay. So when we're talking
 6 about the NWDA system, we have previously put
 7 into the record the NWDA, but recently we've
 8 gotten another document, another version of
 9 the document, and I'm going to have it marked
 10 as P18.
 11 (Prevoznik Plaintiff Exhibit
 12 P18 marked for identification.)
 13 QUESTIONS BY MR. FARRELL:
 14 Q. So this is identical to the
 15 document that has been circulated in
 16 litigation before, but as you recall from the
 17 last time we met, there were two pages at the
 18 back of this document that were missing.
 19 So the first thing I want to do
 20 is note that -- you see at the bottom
 21 right-hand corner there is a US DEA Bates
 22 stamp of 00026139?
 23 A. Correct.
 24 Q. And what I'd like to do is I'd
 25 like to address your attention to what is

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1 page 7 of this policy.
 2 **And again, building on the**
 3 **testimony from the previous two days without**
 4 **repeating it, I'm going to show you the**
 5 **bottom right-hand corner is US-DEA-00026146,**
 6 **and I'd ask you to read Roman Numeral IX into**
 7 **the record.**
 8 **A. "Single suspicious orders.**
 9 **Single orders of unusual size or deviation**
 10 **must be reported immediately. The submission**
 11 **of a monthly printout of after-the-fact sales**
 12 **will not relieve a registrant from the**
 13 **responsibility of reporting these single**
 14 **excessive or suspicious orders. DEA has**
 15 **interpreted 'orders' to mean prior to**
 16 **shipment."**
 17 **Q. So my question to you is, is**
 18 **this consistent with the guidance provided by**
 19 **the DEA to wholesalers and distributors?**
 20 MR. EPPICH: Objection.
 21 Foundation.
 22 MS. MAINIGI: Objection.
 23 Foundation.
 24 **THE WITNESS: Yes.**
 25

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1 MR. EPPICH: Object to the
 2 form.
 3 THE WITNESS: Yes.
 4 QUESTIONS BY MR. FARRELL:
 5 Q. Okay. As the DEA, can you tell
 6 me on page 2 who the author of this document
 7 is?
 8 A. Thomas Gitchel.
 9 Q. And who is Thomas Gitchel?
 10 A. He was -- at this point he was
 11 the acting chief of diversion operations.
 12 Q. Of the DEA?
 13 A. Of the DEA.
 14 Q. Okay. And I've highlighted
 15 down -- a particular provision for emphasis
 16 to build on the previous two days' testimony.
 17 Beginning with "As previously discussed,"
 18 could you read that provision into the
 19 record?
 20 A. "An after-the-fact computer
 21 printout of sales data does not relieve a
 22 registrant of its responsibility to report
 23 excessive or suspicious orders when
 24 discovered."
 25 Q. Is this consistent with the

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1 QUESTIONS BY MR. FARRELL:
 2 Q. Is this consistent with the
 3 guidance provided by Ronald Buzzeeo at the
 4 San Antonio conference hosted by the DEA?
 5 MR. EPPICH: Objection.
 6 Foundation. Calls for speculation.
 7 MR. FINKELSTEIN: Scope.
 8 You can answer, if you know.
 9 MS. MAINIGI: Scope.
 10 THE WITNESS: Looking at the
 11 two, yes.
 12 QUESTIONS BY MR. FARRELL:
 13 Q. Now, I'm going to have you turn
 14 to the NWDA policy and the comments that come
 15 from the DEA that were previously discussed,
 16 but I'm going to reference the Bates stamp
 17 numbers in the bottom right-hand corner,
 18 including US-DEA-00026148. It's dated
 19 April 24, 1984.
 20 Have you found it?
 21 A. Yes.
 22 Q. Okay. And again, we've already
 23 established the foundation for this, but
 24 we'll do it again.
 25 Do you recognize this document?

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1 guidance the DEA has provided to the
 2 wholesalers and manufacturers of prescription
 3 opioids?
 4 MR. EPPICH: Object to form.
 5 THE WITNESS: Yes.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. I'm going to show you -- which
 8 is the last page of this document. And
 9 you'll see in the bottom right-hand corner is
 10 US-DEA-00026150. It has the stamp of May 16,
 11 1984.
 12 And I would ask do you
 13 recognize this document?
 14 A. Yes.
 15 Q. And what is it?
 16 A. It's a letter from Mr. Gitchel,
 17 again, from DEA to the National Wholesales
 18 Druggists' Association.
 19 Q. And again, I've highlighted for
 20 your convenience the last sentence of the
 21 first paragraph beginning with the word
 22 "however," and I'd ask for you to read it
 23 into the record.
 24 A. "However, I want to make it
 25 clear that the submission of a monthly

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1 printout of after-the-fact sales will not
 2 relieve a registrant from the responsibility
 3 of reporting excessive or suspicious orders.
 4 DEA has interpreted 'orders' to mean prior to
 5 shipment."
 6 Q. Is this consistent with the
 7 guidance the DEA has provided to wholesalers
 8 and manufacturers of prescription opioids?
 9 MS. MAINIGI: Objection.
 10 MR. EPPICH: Objection.
 11 THE WITNESS: Yes.
 12 (Prevoznik Plaintiff Exhibit
 13 P19 marked for identification.)
 14 QUESTIONS BY MR. FARRELL:
 15 Q. The next document I'm going to
 16 have marked as Plaintiff's Exhibit 19, it
 17 bears Bate stamp US-DEA-00025683. I'll give
 18 you a second to take a look at it, but I'm
 19 assuming you're familiar with this document.
 20 Do you see the bottom
 21 right-hand corner, it bears the Bates stamp
 22 US DEA?
 23 A. Yes.
 24 Q. Do you recognize this document?
 25 A. Yes.

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1 distributors of prescription opioids to adopt
 2 uniform reporting procedures?
 3 MR. EPPICH: Object to form.
 4 Foundation.
 5 THE WITNESS: Yes.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. All right. What I'm going to
 8 emphasize is the very last two sentences that
 9 begin with "the submission."
 10 Do you see that provision?
 11 A. Yes.
 12 Q. And I'd ask you to read that
 13 into the record.
 14 A. "The submission of a monthly
 15 printout of after-the-fact sales does not
 16 relieve the registrant of the responsibility
 17 of reporting excessive or suspicious orders.
 18 These regulations require that a registrant
 19 maintain a system to detect excessive orders
 20 rather than sales of controlled substances."
 21 Q. Is this statement consistent
 22 with the guidance provided by the DEA to
 23 wholesale distributors and manufacturers of
 24 prescription opioids?
 25 MR. EPPICH: Object to form.

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1 Q. What is it?
 2 A. It's a letter from Mr. Buzzeo,
 3 who was at that point the deputy director of
 4 diversion control, to Walgreens.
 5 Q. And what's the date?
 6 A. December 27, 1988.
 7 Q. Okay. Would you read the first
 8 sentence that's emphasized on your monitor?
 9 A. "References made to our
 10 November 4, 1988 meeting regarding a proposed
 11 system of detecting and reporting excessive
 12 orders."
 13 Q. All right. If you look down at
 14 the -- you can read the rest -- the first
 15 paragraph, but I'm going to direct your
 16 attention to the beginning of the second
 17 paragraph where it states, "The Drug
 18 Enforcement Administration supports the
 19 effort by the Walgreen Company to provide a
 20 uniform reporting procedure for its
 21 warehouses."
 22 Do you see that?
 23 A. Yes.
 24 Q. In fact, is this consistent
 25 that the DEA has encouraged wholesalers and

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1 Foundation.
 2 THE WITNESS: Yes.
 3 QUESTIONS BY MR. FARRELL:
 4 Q. Now, not only being consistent,
 5 this, in fact, is the actual statement
 6 provided by the DEA to Walgreens, agreed?
 7 MR. EPPICH: Object to form.
 8 Foundation.
 9 THE WITNESS: Yes.
 10 QUESTIONS BY MR. FARRELL:
 11 Q. Would you agree with me that
 12 since at least 1988, Walgreens has been on
 13 notice from the DEA that if they rely upon
 14 after-the-fact sales to comply with the
 15 Controlled Substances Act and the regulations
 16 promulgated by the DEA, that they may not be
 17 in compliance with federal law?
 18 MR. EPPICH: Object to form.
 19 Foundation.
 20 THE WITNESS: Yes.
 21 QUESTIONS BY MR. FARRELL:
 22 Q. If any of the wholesale
 23 distributors or manufacturers of prescription
 24 opioids rely upon after-the-fact reporting of
 25 excessive orders to -- as the system they

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1 designed under 1301.74(b), is that sufficient
 2 to comply with federal law?
 3 MR. EPPICH: Object to form.
 4 Foundation.
 5 MR. MAHADY: Objection. Vague.
 6 THE WITNESS: Could you please
 7 repeat it?
 8 QUESTIONS BY MR. FARRELL:
 9 **Q. If any distributor of**
 10 **prescription opioids relies upon**
 11 **after-the-fact sales reporting as the full**
 12 **scope of its compliance with 1301.74(b), does**
 13 **the DEA believe that it's sufficient to**
 14 **satisfy the obligations under federal law?**
 15 MS. MAINIGI: Objection.
 16 MR. EPPICH: Object to form.
 17 Foundation. Vague.
 18 **THE WITNESS: No.**
 19 QUESTIONS BY MR. FARRELL:
 20 Q. If any expert witness in this
 21 litigation argues that after-the-fact sales
 22 are sufficient to comply with federal
 23 regulations, is the expert witness right or
 24 wrong?
 25 MS. MAINIGI: Objection to

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1 Q. Okay. Was this record made at
 2 or near the time of someone with knowledge
 3 about the conversations therein?
 4 MR. FINKELSTEIN: Scope.
 5 MR. EPPICH: Objection.
 6 MS. MAINIGI: Objection.
 7 Scope. Form. Foundation.
 8 MR. FINKELSTEIN: Scope.
 9 You can answer.
 10 THE WITNESS: Yes.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. It appears, to give you the
 13 short form of it, that this is a discussion
 14 between Mr. Haislip and a Mr. Jordan.
 15 Who is Mr. Haislip?
 16 A. He was the director of the
 17 Office of Diversion Control for DEA.
 18 Q. What does that mean?
 19 A. He's in charge of the diversion
 20 program within DEA.
 21 Q. So in the ranking, in my mind,
 22 where does that put him in the rank?
 23 A. He's the top.
 24 Q. And then Mr. Jordan. Who is
 25 Mr. Jordan?

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1 form. Scope.
 2 MR. EPPICH: Objection.
 3 THE WITNESS: They would be
 4 wrong.
 5 (Prevoznik Plaintiff's Exhibit
 6 P20 marked for identification.)
 7 QUESTIONS BY MR. FARRELL:
 8 Q. The next document I'm going to
 9 have marked is P20.
 10 And I'll direct your attention
 11 to the bottom right-hand corner with the
 12 Bates stamp US-DEA-00026154. It has the
 13 stamp of December 8, 1993, and I'm going to
 14 ask you if you recognize this document.
 15 A. Yes.
 16 Q. What is this document?
 17 A. This is an internal document
 18 from Gene Haislip, our director of Office and
 19 Diversion Control DEA, to the SAC, or special
 20 agent in charge, of our Dallas field
 21 division.
 22 Q. Okay. Is this the type of
 23 document that the DEA keeps in the course of
 24 its regularly conducted activity?
 25 A. Yes.

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1 A. He's the special agent in
 2 charge of our Dallas field division, so he's
 3 the head of the entire DEA Dallas field
 4 division.
 5 Q. And how many different field
 6 divisions are there?
 7 A. At this time or now?
 8 Q. At this time.
 9 If the DEA remembers in its
 10 official capacity.
 11 A. Yeah, I don't -- I'd be
 12 speculating. I think it was 20.
 13 Q. 20?
 14 A. We're now up to 23.
 15 Q. And how many people were in the
 16 cog between the field division boss and the
 17 director?
 18 Is there two levels, three
 19 levels of reporting or direct?
 20 MR. FINKELSTEIN: Vague as to
 21 time.
 22 QUESTIONS BY MR. FARRELL:
 23 Q. In 1993.
 24 A. I'm not sure I understand what
 25 you're asking.

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1 Q. I'm just trying to figure out
 2 this communication.
 3 Is it normal for a field
 4 division boss to be communicating directly
 5 with the director?
 6 A. Yeah. I mean, they're both
 7 SESEs, so they're both --
 8 Q. Okay.
 9 A. They're both the same level.
 10 Q. They're the same rank?
 11 A. Yes.
 12 Q. All right. So it appears that
 13 this is a discussion on whether or not the
 14 DEA is going to provide guidelines on
 15 suspicious order reporting.
 16 Do you see that?
 17 A. Yes.
 18 Q. And I'd ask you to begin
 19 reading, as you see in the second paragraph,
 20 their discussion 1301.74(b).
 21 Do you see that?
 22 A. Yes.
 23 Q. Now, this is in 1993.
 24 Is 1301.74(b) the same in 1993
 25 as it is today?

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1 distributors and manufacturers of
 2 prescription opioids?
 3 MR. EPPICH: Object to form.
 4 Foundation.
 5 THE WITNESS: Yes.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. Now, again, we're going to be
 8 talking about the NWDA again.
 9 Do you see the beginning of the
 10 second paragraph?
 11 And it references the fact that
 12 the DEA was, in fact, aware that the -- some
 13 of the distributors were adopting the NWDA
 14 suspicious order monitoring system.
 15 Beginning with where I've
 16 highlighted, can you please read that into
 17 the record?
 18 A. Start with "can"?
 19 Q. You can, like, ad lib to get to
 20 can, but, yeah.
 21 MR. EPPICH: Objection.
 22 THE WITNESS: "The NWDA
 23 suspicious order monitoring system,
 24 SOM, which has been adopted by many
 25 distributors throughout the United

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1 A. Yes.
 2 Q. And is it the same in all
 3 meaningful ways to what it looked like when
 4 it was enacted in 1971?
 5 A. Yes.
 6 Q. So beginning with
 7 "Section 1301.74(b)," could you read the next
 8 sentence?
 9 A. "1301.74(b) of Title 21 of the
 10 Code of Federal Regulations clearly places
 11 the responsibility for designing and
 12 operating a system to identify suspicious
 13 orders of controlled substances on the
 14 registrant. Implicit in this regulation is
 15 the idea that the registrant should not
 16 merely be accumulating data on what appear to
 17 be excessive purchases for eventual
 18 submission to DEA but rather that the system
 19 be monitored so that any such orders will be
 20 apparent to the registrant so that they -- so
 21 that they can be reported to DEA upon
 22 discovery and, whenever possible, before the
 23 order is shipped."
 24 Q. Is this consistent with the
 25 guidance provided by the DEA to wholesale

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1 States, can be an effective monitoring
 2 and reporting system provided that the
 3 firm's using it to recognize their
 4 responsibility to actively monitor
 5 sales to detect suspicious orders."
 6 QUESTIONS BY MR. FARRELL:
 7 Q. Is this consistent with the
 8 guidance provided by the DEA to wholesale
 9 distributors and manufacturers of
 10 prescription opioids?
 11 MR. EPPICH: Object to form.
 12 Foundation.
 13 THE WITNESS: Yes.
 14 QUESTIONS BY MR. FARRELL:
 15 **Q. Now, at the very bottom, there**
 16 **is a discussion from the director beginning**
 17 **with the last paragraph on the bottom of the**
 18 **page beginning "what is -- what is of**
 19 **particular concern."**
 20 **Can you please read that into**
 21 **the record?**
 22 **A. "What is of particular concern**
 23 **to me is the statement that appears on the**
 24 **report submitted by the McKesson Corporation**
 25 **in Fort Worth, Texas. For example, "With the**

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1 submission of this report, we are leaving to
 2 the DEA the final determination of whether
 3 they are suspicious or unusual.' This
 4 position is unacceptable and clearly in
 5 contravention to the requirements of 21 CFR
 6 1301.74(b).
 7 "A registrant whose own
 8 personnel are in the best position to
 9 determine what is excessive or unusual based
 10 on knowledge of their customers and usual
 11 purchasing practices may not abrogate its
 12 responsibility to identify suspicious orders
 13 and to determine whether to ship or refuse to
 14 ship the controlled substance order.
 15 "The registrant must also
 16 report any suspicious orders as soon as
 17 possible to the DEA. This has been conveyed
 18 to the McKesson national management in San
 19 Francisco, and they have agreed to remove the
 20 statement from reports."
 21 Q. So on behalf of the DEA, can
 22 you validate that this is a true and accurate
 23 summary of the conversation between the DEA
 24 and McKesson?
 25 MR. FINKELSTEIN: Scope.

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1 repeat that?
 2 QUESTIONS BY MR. FARRELL:
 3 Q. Is a registrant allowed to
 4 delegate its obligations under 1301.74(b) to
 5 another party to perform and escape liability
 6 from the DEA for failure to comply?
 7 MR. EPPICH: Objection to form.
 8 MR. MAHADY: Foundation.
 9 MR. FINKELSTEIN: Scope.
 10 THE WITNESS: No.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. So if a registrant that has an
 13 obligation under the CSA delegates the
 14 responsibilities to, say, UPS and/or Federal
 15 Express and a violation occurs, is the
 16 registrant ultimately still responsible for
 17 those violations?
 18 MR. EPPICH: Objection to form.
 19 Calls for a legal conclusion. Scope.
 20 MR. FINKELSTEIN: Incomplete
 21 hypothetical.
 22 THE WITNESS: I'm sorry, can
 23 you please repeat it?
 24 QUESTIONS BY MR. FARRELL:
 25 Q. If Actavis delegates to UPS

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1 MR. MAHADY: Object to form.
 2 THE WITNESS: Yes.
 3 QUESTIONS BY MR. FARRELL:
 4 Q. Is this consistent with the
 5 guidance that DEA provided not only to
 6 McKesson but to every other wholesale
 7 distributor and manufacturer of prescription
 8 opioids?
 9 MR. EPPICH: Object to form.
 10 Foundation.
 11 MR. MAHADY: Objection.
 12 MR. FINKELSTEIN: Scope.
 13 THE WITNESS: Yes.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. Now, follow up real quick. You
 16 see here where it says that "a registrant may
 17 not abrogate its responsibility"? I have a
 18 follow-up question to that.
 19 Is a registrant permitted to
 20 delegate this -- its obligations to design
 21 and operate a system to maintain effective
 22 control against diversion to a third party
 23 and avoid being held responsible by the DEA?
 24 MR. EPPICH: Object to form.
 25 THE WITNESS: Could you please

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1 their obligations to maintain effective
 2 control, and the DEA determines in their best
 3 judgment and upon investigation that a
 4 violation has occurred, does the DEA take the
 5 position that Actavis is still ultimately
 6 responsible for the violation?
 7 MS. MATIC: Objection to form.
 8 MR. EPPICH: Object to form.
 9 Calls for a legal conclusion. Scope.
 10 THE WITNESS: Yes.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. Would the DEA in fact
 13 investigate and, if they found probable
 14 cause, prosecute both UPS and Actavis under
 15 that hypothetical?
 16 MS. MAINIGI: Objection.
 17 Scope. Calls for a legal conclusion.
 18 Hypothetical. Form.
 19 MR. FINKELSTEIN: Let me
 20 object. Scope.
 21 THE WITNESS: I would agree we
 22 would investigate. I don't -- I don't
 23 know where the investigation would go,
 24 but we would investigate it.
 25

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1 QUESTIONS BY MR. FARRELL:
 2 Q. And if you found that UPS
 3 violated the Controlled Substances Act, would
 4 you prosecute both UPS and Actavis?
 5 A. It, again, depends --
 6 MS. MAINIGI: Same objections.
 7 MR. FINKELSTEIN: Scope.
 8 THE WITNESS: Depends on what
 9 the evidence shows, but we would
 10 investigate it, both parties.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. That's fair. It's tough to
 13 give a hypothetical with this scenario, so
 14 let me see if I can be more direct.
 15 If Cardinal Health delegates
 16 its obligations under 1301.74(b) to CVS to
 17 police themselves, is that -- does the DEA
 18 consider that in compliance with federal law?
 19 MS. MAINIGI: Objection.
 20 Scope. Incomplete hypothetical.
 21 Foundation. Form.
 22 MR. FINKELSTEIN: Join as to
 23 incomplete hypothetical.
 24 THE WITNESS: No.
 25 (Prevoznik Plaintiff's Exhibit

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1 A. Is this a different...
 2 Q. It should be the same one. If
 3 you look at what I highlighted there, it's
 4 only one page.
 5 A. It's only one page?
 6 Q. Yeah. You see where my finger
 7 is right here?
 8 A. That one. Sorry. Yeah.
 9 Sorry, I'm good.
 10 Q. All right. Now, if you look,
 11 I'm going to -- I'm going to give you a
 12 chance to take a read, but I'm going to
 13 summarize it for you.
 14 Is this the DEA's publication
 15 and notice to the public that it was forming
 16 a task force on suspicious orders pursuant to
 17 the Comprehensive Methamphetamine Control Act
 18 of 1996?
 19 MR. FINKELSTEIN: Take your
 20 time to read it if you need to.
 21 MS. MAINIGI: Objection.
 22 THE WITNESS: Yes.
 23 QUESTIONS BY MR. FARRELL:
 24 Q. All right. Now, when you look
 25 at the public notice, it states that "the DEA

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1 P21 marked for identification.)
 2 QUESTIONS BY MR. FARRELL:
 3 Q. I'm going to mark next what's
 4 going to be P21 and hand it to you. And I'll
 5 have you look at the bottom right-hand
 6 corner. You'll note that there's a Bates
 7 stamp US-DEA-00025302.
 8 Do you recognize this document?
 9 A. Yes.
 10 Q. What is it?
 11 A. It's a Federal Register
 12 announcing that there's going to be a meeting
 13 for the task force on suspicious orders
 14 December 16th and 17th of 1997.
 15 Q. Does the DEA publish in the
 16 Federal Register notices for the entire world
 17 that can read English to read?
 18 MS. MAINIGI: Objection.
 19 THE WITNESS: Yes.
 20 QUESTIONS BY MR. FARRELL:
 21 Q. You'll note that this in
 22 particular Federal Register action has been
 23 labeled "Notice of Establishment of Task
 24 Force on Suspicious Orders."
 25 Do you see that?

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1 is establishing a task force on suspicious
 2 orders for the purpose of developing
 3 proposals to define suspicious orders of
 4 listed chemicals."
 5 Do you see that?
 6 A. Yes.
 7 Q. As we discussed at length
 8 before, prescription opioids are not
 9 necessarily listed chemicals, are they?
 10 MR. EPPICH: Object to form.
 11 Foundation. Calls for speculation.
 12 THE WITNESS: Yes.
 13 QUESTIONS BY MR. FARRELL:
 14 Q. Well, let's be a little more
 15 direct.
 16 The DEA makes proposals and
 17 provides input on what should be a listed
 18 chemical and what should be a controlled
 19 substance, agreed?
 20 A. Agreed.
 21 Q. And the listed chemicals that
 22 they're referencing in this public notice for
 23 this task force relate to the Methamphetamine
 24 Act and ephedrine and pseudoephedrine used to
 25 make methamphetamine --

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1 MR. EPPICH: Object to the
 2 form.
 3 QUESTIONS BY MR. FARRELL:
 4 Q. Agreed?
 5 MR. EPPICH: Objection. Form.
 6 THE WITNESS: Yes.
 7 QUESTIONS BY MR. FARRELL:
 8 Q. And as we discussed previously,
 9 suspicious orders of listed chemicals used to
 10 make methamphetamine are defined as orders
 11 that are extraordinary in size, agreed?
 12 MR. FINKELSTEIN: Objection to
 13 form. Calls for speculation.
 14 THE WITNESS: Agreed.
 15 QUESTIONS BY MR. FARRELL:
 16 Q. And there's a different
 17 standard and a different regulation that
 18 govern controlled substances or suspicious
 19 orders of controlled substances, agreed?
 20 MR. EPPICH: Objection to form.
 21 THE WITNESS: Agreed.
 22 QUESTIONS BY MR. FARRELL:
 23 Q. Now, when you look at this
 24 notice, it says, "The proposals establish
 25 guidelines that will adequately define

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1 MR. EPPICH: Object to form.
 2 MR. O'CONNOR: Objection.
 3 Foundation.
 4 MS. MAINIGI: Also scope.
 5 THE WITNESS: No.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. Now, if you look at the bottom
 8 right-hand corner, you'll see who the DEA was
 9 tasked to add to this task force.
 10 Did the DEA, in fact, add to
 11 this task force a member from the National
 12 Association of Boards of Pharmacy?
 13 A. Yes.
 14 Q. And members from the Chemical
 15 Manufacturers Association?
 16 A. Yes.
 17 Q. And members from the National
 18 Association of Chemical Distributors?
 19 A. Yes.
 20 Q. And a member from the
 21 Nonprescription Drug Manufacturers
 22 Association?
 23 A. Yes.
 24 Q. And, in fact, four members from
 25 the wholesale and retail pharmaceutical

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1 suspicious orders of listed chemicals."
 2 Do you see that?
 3 A. Yes.
 4 Q. Does the DEA believe this task
 5 force was assigned the project of defining
 6 suspicious orders of controlled substances
 7 that don't contain listed chemicals?
 8 MR. EPPICH: Object to form.
 9 Calls for speculation. Foundation.
 10 THE WITNESS: No.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. So the DEA not only was on this
 13 task force, it was assigned the obligation by
 14 Congress to form this task force. So I'm not
 15 asking you to speculate. I'm asking the DEA
 16 itself.
 17 When you promulgated this
 18 report to the Attorney General, were you
 19 intending to provide any guidance to the
 20 wholesale distributors and manufacturers of
 21 prescription opioids that it should be using
 22 the standards therein to measure whether or
 23 not a suspicious order of controlled
 24 substances falls under the federal
 25 regulations?

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1 marketing associations?
 2 A. Yes.
 3 (Prevoznik Plaintiff Exhibits
 4 P22, P23, P24 and P25 marked for
 5 identification.)
 6 QUESTIONS BY MR. FARRELL:
 7 Q. All right. I've got three
 8 documents I'm going to show you now, and
 9 they're going to be marked separately P22,
 10 P23 and P24. Oops, and P25. There's four
 11 documents in total.
 12 And I'll give you a second to
 13 review it while we pass it around the table.
 14 MR. FINKELSTEIN: I have three
 15 documents. Because mine are not
 16 marked, perhaps you can just tell me
 17 which is which in terms of exhibit
 18 number?
 19 MR. FARRELL: Yeah, the
 20 first -- they should be in
 21 chronological order. So it should go
 22 AmerisourceBergen first. The top
 23 right is August 16, 2005, Bates stamp
 24 US-DEA-00000147.
 25 The next one should be --

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1 MR. FINKELSTEIN: You didn't
 2 give me 147.
 3 Okay. 147 is 22, correct?
 4 MR. FARRELL: Yes.
 5 MR. FINKELSTEIN: Okay.
 6 MR. FARRELL: The next one is
 7 Cardinal Health, I believe, and it
 8 bears Bates stamp US-DEA, a bunch of
 9 zeros, and then 352.
 10 MR. FINKELSTEIN: Okay.
 11 MR. FARRELL: Then the next
 12 one, I believe, should be December 6,
 13 2005, and in the bottom right-hand
 14 corner is US-DEA-00000369.
 15 And then the final one is dated
 16 January 23, 2006, in the bottom
 17 right-hand corner is US-DEA-00000371.
 18 MR. FINKELSTEIN: Okay.
 19 QUESTIONS BY MR. FARRELL:
 20 Q. Let me know when you're ready
 21 to proceed.
 22 Do you want to take a few
 23 minutes to read these?
 24 A. Yes, please.
 25 Q. Do you want to take a quick

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1 twice.
 2 Q. Okay. So in general, are these
 3 the documents the DEA created to internally
 4 memorialize the initial meetings in and
 5 around 2005 that the jury has heard about
 6 related to what's called the distributor
 7 initiative?
 8 A. Yes.
 9 Q. Now, these documents weren't
 10 provided to the registrants, were they?
 11 A. These reports?
 12 Q. Correct.
 13 A. Correct.
 14 Q. But these documents were
 15 created -- let me back up.
 16 Do you have knowledge of
 17 whether these documents were made at or near
 18 the time of the meetings?
 19 MR. EPPICH: Objection.
 20 Foundation.
 21 THE WITNESS: Well, from the
 22 date stamp, it's around those dates.
 23 QUESTIONS BY MR. FARRELL:
 24 Q. Is this reflective of the
 25 practice of the DEA, with regard to the

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1 break while we do so?
 2 MS. SINGER: Let's keep going.
 3 MR. EPPICH: Do we typically go
 4 off the record to review documents?
 5 SPECIAL MASTER COHEN: No.
 6 MR. FARRELL: I didn't say
 7 that. I said -- I asked him if he
 8 wanted to take a break, and he said
 9 no.
 10 QUESTIONS BY MR. FARRELL:
 11 Q. I don't know if this will save
 12 you some time. I'm not intending on quizzing
 13 you on the contents of these, other than
 14 establishing what they are and the foundation
 15 for what the DEA was doing.
 16 A. Okay.
 17 Q. I'm going to ask you first: Do
 18 you recognize these documents?
 19 A. Yes.
 20 Q. Okay. What are they
 21 collectively?
 22 A. Collectively they represent
 23 what happened with meetings with the
 24 respective registrants, AmerisourceBergen,
 25 Cardinal, McKesson and -- I see McKesson

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1 distributor initiative, to document what
 2 happened during the meetings with
 3 registrants?
 4 A. Yes.
 5 Q. Now, the DEA has conducted
 6 hundreds of these meetings, correct?
 7 MS. MAINIGI: Objection.
 8 THE WITNESS: Correct.
 9 QUESTIONS BY MR. FARRELL:
 10 Q. So rather than go through all
 11 of them, if one of these memorandums contains
 12 a Bates stamp of US DEA and is produced by
 13 the Department of Justice in this litigation,
 14 is it the DEA's position that the photocopy
 15 being submitted is a true and accurate copy
 16 of the original?
 17 MR. MAHADY: Objection.
 18 Foundation.
 19 THE WITNESS: Yes.
 20 QUESTIONS BY MR. FARRELL:
 21 Q. Does the DEA acknowledge that
 22 all of those such documents bearing the
 23 US DEA Bates stamp are, in fact, in the
 24 possession, custody and control of the DEA
 25 and document the discussions and contents of

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1 each distributor initiative meeting?
 2 A. Yes.
 3 Q. So in particular what I'd ask
 4 you to do is to go to the very -- is to go to
 5 the first one, which is AmerisourceBergen's,
 6 and you'll see that this is the summary of
 7 the meeting on August 10, 2005.
 8 Do you see that?
 9 A. Yes.
 10 Q. And it goes through and it
 11 describes all of the things that were
 12 discussed in the documents that were provided
 13 during the meeting.
 14 Do you see that?
 15 A. Yes.
 16 Q. Now, I'll represent to you that
 17 I'm not going to produce all of the thousands
 18 of pages as an exhibit, but I'll represent to
 19 you that there are, in fact, exhibits that go
 20 with this that the DEA produced in this
 21 litigation.
 22 Agreed?
 23 MR. MAHADY: Objection. Form.
 24 Objection to foundation.
 25 THE WITNESS: Yes.

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1 distributor of the responsibility to maintain
 2 effective controls against diversion."
 3 Did I read that accurately?
 4 A. Yes.
 5 Q. Okay. Why did the DEA put the
 6 word "not" in all caps?
 7 A. To emphasize that they had to
 8 provide the suspicious order, not just -- not
 9 just after-sales reports.
 10 Q. The next slide, it says, "The
 11 DEA cannot tell a distributor if an order is
 12 legitimate or not" and that "the distributor
 13 must determine which orders are suspicious
 14 and make a sales decision."
 15 Is this similar to all of the
 16 other slide shows the DEA provided to the
 17 distributors back in the 2000 -- 2005, 2006
 18 time frame?
 19 MR. MAHADY: Objection to form.
 20 Objection to foundation.
 21 THE WITNESS: Yes.
 22 QUESTIONS BY MR. FARRELL:
 23 Q. In other words, this PowerPoint
 24 presentation, was it a stock PowerPoint
 25 presentation that was shown to Cardinal

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1 QUESTIONS BY MR. FARRELL:
 2 Q. Now, one of the things I'd like
 3 to direct your attention to is that many of
 4 the distributors have made the statement that
 5 this presentation was only related to
 6 Internet pharmacies. And in fact, I believe
 7 they asked you that question during the time
 8 that they deposed you for the previous two
 9 days.
 10 What I'd ask you to do is I'd
 11 ask you to turn to page 7 of the PowerPoint
 12 presentation with AmerisourceBergen.
 13 And you see where it says,
 14 "Report suspicious orders to DEA when
 15 discovered"?
 16 Do you see that?
 17 A. Yes.
 18 Q. So this is the PowerPoint slide
 19 by the DEA with AmerisourceBergen as early as
 20 2005.
 21 Agreed?
 22 A. Agreed.
 23 Q. And if you look at the next
 24 slide, it states, "Reporting a suspicious
 25 order to the DEA does not relieve the

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1 Health?
 2 A. Yes.
 3 Q. Was it shown to McKesson?
 4 A. Yes.
 5 Q. Was it shown to CVS?
 6 MS. FUMERTON: Objection.
 7 Form. Lack of foundation.
 8 MR. FARRELL: That actually
 9 might be right.
 10 QUESTIONS BY MR. FARRELL:
 11 Q. Was it -- to all of the
 12 distributors that the DEA met with in 2005
 13 and 2006, is this the stock PowerPoint
 14 presentation that was used?
 15 A. Yes.
 16 MS. FUMERTON: Objection.
 17 QUESTIONS BY MR. FARRELL:
 18 Q. So I'm also going to have you
 19 flip to page 12.
 20 In the summary slides, the very
 21 last bullet point, can you read what that
 22 says?
 23 A. "Not limited to Internet
 24 pharmacies."
 25 Q. What does that mean?

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1 MR. EPPICH: Object to form.
 2 Foundation.
 3 QUESTIONS BY MR. FARRELL:
 4 Q. Go ahead.
 5 **A. It's not just the -- what the**
 6 **Internet pharmacies was, but it would be any**
 7 **pharmacy, retail.**
 8 **Q. The very next slide, it says,**
 9 **"A pattern of drugs being distributed to**
 10 **pharmacies who are diverting controlled**
 11 **substances demonstrates the lack of effective**
 12 **controls against diversion by the**
 13 **distributor."**
 14 **This PowerPoint presentation in**
 15 **the distributor initiative meeting, it was**
 16 **not just limited to rogue Internet**
 17 **pharmacies, was it?**
 18 MR. EPPICH: Object to form.
 19 Foundation. Calls for speculation.
 20 **THE WITNESS: No. The emphasis**
 21 **was regarding the Internet, but it was**
 22 **for the totality of their**
 23 **responsibilities as a registrant.**
 24 QUESTIONS BY MR. FARRELL:
 25 Q. But as consistent with the very

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1 QUESTIONS BY MR. FARRELL:
 2 Q. Now, the next one is McKesson,
 3 and we're going to take a real quick stop to
 4 take a look at this one.
 5 This is dated -- the first one
 6 is December 6, 2005, and it appears to be a
 7 conference call with Mr. John Gilbert.
 8 Do you see that?
 9 A. Yes.
 10 Q. And Mr. Mapes and Kyle Wright
 11 of the DEA.
 12 Who are Mr. Mapes and
 13 Mr. Wright of the DEA?
 14 A. Mr. Mapes was the section chief
 15 of our E-Commerce section, and Kyle Wright at
 16 this time was a staff coordinator in
 17 Mr. Mapes' section.
 18 Q. So the next plaintiff's exhibit
 19 has the Bates stamp at the bottom corner of
 20 US-DEA-00000371, and you'll see that it's
 21 dated January 23, 2006, but it's referencing
 22 a January 3, 2006 meeting.
 23 Do you see that?
 24 A. Yes.
 25 Q. And in it you can see where it

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1 next sentence, did the DEA make it clear to
 2 those distributors that it met with in 2005
 3 and 2006 that if they didn't comply with
 4 federal law regarding the detection, the
 5 reporting and the halting of suspicious
 6 orders, that the DEA may revoke their
 7 registration?
 8 MR. MAHADY: Objection to form.
 9 THE WITNESS: Yes.
 10 QUESTIONS BY MR. FARRELL:
 11 Q. Cardinal Health is the next
 12 plaintiff's exhibit, Bates-stamped
 13 US-DEA-352. And just to make sure that
 14 there's no hanky-panky, you'll see that the
 15 PowerPoint slide is attached to this document
 16 as well and is consistent with all the other
 17 PowerPoint slides provided to the -- or all
 18 the other distributor initiative meetings.
 19 Would you agree with that?
 20 MS. FUMERTON: Objection.
 21 Form.
 22 THE WITNESS: Yes.
 23 MS. FUMERTON: Lack of
 24 foundation.
 25

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1 looks like it contains -- this is the
 2 memorandum of the meeting between McKesson
 3 and the DEA as a result of the distributor
 4 initiative. Agreed?
 5 MR. EPPICH: Object to form and
 6 foundation.
 7 **THE WITNESS: Yes.**
 8 **QUESTIONS BY MR. FARRELL:**
 9 **Q. Now, what I'm going to ask you**
 10 **to do is I'm going to ask you to go to the**
 11 **end of page 2. And at the bottom, starting**
 12 **with the word "after," the very last**
 13 **paragraph, I'd ask you to read that into the**
 14 **record.**
 15 **A. "After the conclusion of this**
 16 **meeting, it was learned from Gary Hilliard of**
 17 **McKesson Corp that one of the reasons they**
 18 **were not able to realize the full volume of**
 19 **hydrocodone product going out to the Florida**
 20 **pharmacies was that their reports only**
 21 **included the name brand hydrocodone products**
 22 **distributed and was leaving out the generic**
 23 **products."**
 24 **Q. The next sentence.**
 25 **A. "It was only after realizing**

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1 that the generic were not being reported was
 2 McKesson Corp then able to see the large
 3 quantities that DEA was bringing to
 4 McKesson's attention."
 5 Q. So I don't know how to say this
 6 any other way, but in 2006 when the DEA met
 7 with McKesson with its distributor initiative
 8 program, was it discovered that McKesson was
 9 only tracking the brand name prescription
 10 opiates?
 11 MR. EPPICH: Object to form.
 12 Foundation. Calls for speculation.
 13 Scope.
 14 THE WITNESS: Could you please
 15 repeat it?
 16 QUESTIONS BY MR. FARRELL:
 17 Q. This document, following the
 18 distributor initiative meeting between the
 19 DEA and McKesson, appears to present the fact
 20 that the DEA discovered McKesson was only
 21 tracking brand name prescription opiates.
 22 A. Correct.
 23 MR. EPPICH: Object to the
 24 form. Foundation. Calls for
 25 speculation.

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1 You can answer in your personal
 2 capacity, but not on behalf of the
 3 DEA.
 4 THE WITNESS: I have no idea.
 5 QUESTIONS BY MR. FARRELL:
 6 Q. A lot?
 7 MR. EPPICH: Same objections.
 8 MR. FINKELSTEIN: Same
 9 objection.
 10 THE WITNESS: Yes.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. All right. On a scale of 0 of
 13 10 of screw-ups, how big of a screw-up is
 14 this?
 15 MR. EPPICH: Object to form.
 16 Argumentative.
 17 MR. FINKELSTEIN: Same
 18 objection.
 19 You can answer in your personal
 20 capacity, but not on behalf of the
 21 DEA.
 22 THE WITNESS: In my personal
 23 capacity, a big one, a really big one.
 24 QUESTIONS BY MR. FARRELL:
 25 Q. Epic?

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1 THE WITNESS: Correct.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. If, in fact, McKesson was only
 4 tracking brand name prescription opiates and
 5 leaving out the generic products, is that a
 6 violation of federal law?
 7 MR. EPPICH: Object to form.
 8 Foundation. Calls for speculation.
 9 Calls for a legal conclusion.
 10 THE WITNESS: Yes.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. Sitting here today as the
 13 custodian of ARCOS and the institutional
 14 knowledge of the Drug Enforcement
 15 Administration, if this is true, how many
 16 generic prescription orders do you estimate
 17 that McKesson missed prior to 2005?
 18 MR. EPPICH: Object to the
 19 form. Calls for speculation. Calls
 20 for a legal conclusion, and I believe
 21 it would be outside the Touhy
 22 authorization.
 23 MS. MAINIGI: Join.
 24 MR. FINKELSTEIN: Scope. Calls
 25 for speculation.

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1 A. Yes.
 2 MR. EPPICH: Same objections.
 3 (Prevoznik Plaintiff's Exhibit
 4 P26 marked for identification.)
 5 QUESTIONS BY MR. FARRELL:
 6 Q. We're now going to jump ahead a
 7 little bit. I'm going to show you what's
 8 next marked as Plaintiff's 26.
 9 This is a series of letters
 10 that the DEA, institutionally and with
 11 perfect recollection, will recall that --
 12 between the lawyers for Cardinal Health and
 13 the DEA, the first time they got in trouble
 14 for breaking the law in 2008.
 15 MS. MAINIGI: Objection.
 16 Scope. Foundation. Form.
 17 QUESTIONS BY MR. FARRELL:
 18 Q. Now, without having to go
 19 through all of the nuances, what I'm going to
 20 ask you to do is I'm going to make a
 21 reference now. At the bottom right-hand
 22 corner is Bates stamp CAH_MDL2804_01376799.
 23 Do you see that? 799 are the
 24 last three numbers.
 25 A. Yes, I have it.

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1 Q. Now, in it, in this letter,
 2 Larry -- to Larry Cote from Cardinal Health's
 3 lawyers, it seems to indicate that controlled
 4 substances that are sold by Cardinal Health
 5 to CVS, Walgreens, Kroger, Kmart and Winn
 6 Dixie, which are large, national or regional
 7 chains, pose no threat of diversion due to
 8 their sophisticated anti-diversion systems
 9 and historical record of compliance.
 10 Do you see that?
 11 MS. MAINIGI: Objection. Form.
 12 Scope. Foundation.
 13 THE WITNESS: Yes.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. Did I read that accurately?
 16 A. Yes.
 17 MS. MAINIGI: Objection.
 18 THE WITNESS: Yes.
 19 QUESTIONS BY MR. FARRELL:
 20 Q. Aside from me reading that
 21 accurately, is it true that large, national,
 22 regional chains of pharmacies pose no threat
 23 of diversion of prescription opioids?
 24 MS. MAINIGI: Objection. Form.
 25 Scope. Foundation.

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1 THE WITNESS: Could you please
 2 repeat it?
 3 QUESTIONS BY MR. FARRELL:
 4 Q. Does the DEA consider -- if a
 5 wholesale distributor came to the DEA and
 6 said, "I've got a new customer and it's CVS,
 7 which is a national chain store, and because
 8 they have such swell security, I don't want
 9 to monitor them for suspicious orders. Is
 10 that okay?"
 11 MR. EPPICH: Object to the
 12 form.
 13 QUESTIONS BY MR. FARRELL:
 14 Q. What would the DEA say?
 15 MR. EPPICH: Object to form and
 16 incomplete hypothetical. Calls for a
 17 legal conclusion. Foundation.
 18 MS. MAINIGI: Scope.
 19 THE WITNESS: They can't do
 20 that.
 21 QUESTIONS BY MR. FARRELL:
 22 Q. And what if I said, "I'm going
 23 to do it anyway"?
 24 MR. EPPICH: Same objection.
 25 MS. MAINIGI: Same objection.

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1 THE WITNESS: It's not true.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. In fact, the DEA has
 4 investigated and prosecuted many of the large
 5 national or regional chains, including CVS
 6 and Walgreens?
 7 MS. MAINIGI: Objection. Form.
 8 Scope. Foundation.
 9 MR. FINKELSTEIN: Objection.
 10 Do not testify based on current
 11 or ongoing investigations. You can
 12 answer based on historical
 13 investigations or prosecutions.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MR. FARRELL:
 16 Q. If a wholesale distributor
 17 decides not to monitor a chain store
 18 pharmacy, is that a per se violation of
 19 federal law?
 20 MR. EPPICH: Object to form.
 21 Calls for a legal conclusion.
 22 MS. MAINIGI: Scope.
 23 QUESTIONS BY MR. FARRELL:
 24 Q. According to the DEA.
 25 MR. EPPICH: Same objection.

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1 THE WITNESS: It's a decision
 2 that they're making, and we're going
 3 to investigate it and we're going to
 4 do what we -- what we need to do to
 5 protect the public.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. And what would you need to do
 8 to protect the public?
 9 MR. FINKELSTEIN: Hang on.
 10 Incomplete hypothetical.
 11 MS. MAINIGI: Objection. Form.
 12 THE WITNESS: We would
 13 investigate to see where the orders
 14 went and how much went and who was --
 15 what they were filling and who had
 16 knowledge of what. What we normally
 17 do with our investigations.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. All right. Would the DEA
 20 provide guidance to such a wholesale
 21 distributor, that regardless of whether its
 22 customer is a national chain pharmacy, the
 23 distributor still must comply with
 24 1301.74(b)?
 25 A. Yes.

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1 MR. EPPICH: Objection to form.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. What if I said to you, "Well,
 4 how about this: How about if I only start
 5 monitoring them after they reach a cap of
 6 20,000 pills in a month?" Would you deem
 7 that to be compliant with federal law?
 8 MR. EPPICH: Object to the
 9 form. Incomplete hypothetical. Calls
 10 for a legal conclusion.
 11 MR. FINKELSTEIN: Incomplete
 12 hypothetical.
 13 THE WITNESS: No.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. Now, in these correspondence
 16 Cardinal Health's lawyers represent that
 17 they're going to retain -- let me see if I
 18 can find the right word and avoid an
 19 objection.
 20 You'll see here a consulting
 21 firm named Cegedim Dendrite and that they're
 22 going to provide the reports on controlled
 23 substance orders to the DEA.
 24 Do you see that?
 25 A. What page are we on?

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1 document that bears the Bates stamp in the
 2 bottom right-hand corner
 3 CAH_MDL2804_03309960.
 4 Have you -- has the DEA, in its
 5 vast institutional knowledge, ever seen this
 6 document before?
 7 MS. MAINIGI: Objection.
 8 Scope. Objection. Form.
 9 MR. FINKELSTEIN: Scope.
 10 MS. MAINIGI: Mr. Finkelstein,
 11 I'm assuming when you make a scope
 12 objection that means you're
 13 instructing him to answer in his
 14 individual capacity?
 15 MR. FINKELSTEIN: When I make a
 16 scope objection and when I have made
 17 such objections in the past, it should
 18 be understood that you can answer
 19 based on your personal knowledge in
 20 your individual capacity, but your
 21 answers do not bind the DEA.
 22 Do you understand that?
 23 THE WITNESS: Yes.
 24 MR. FARRELL: So we're going
 25 to -- David, we're going to need you.

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1 Well, I would prefer to know
 2 what page we're on.
 3 Q. Okay. This is the -- the last
 4 three digits are 803. And it's the first
 5 full paragraph.
 6 A. Okay.
 7 Q. There's another reference in
 8 here to Cegedim Dendrite, and I'll represent
 9 to you that the correspondence indicates that
 10 Cardinal Health was telling the DEA, "Please
 11 don't revoke our license or suspend our
 12 license or fine us. We're going to hire this
 13 outside consultant, and we're going to share
 14 the report with you." I'm going to make that
 15 representation.
 16 Has the DEA, in fact, ever seen
 17 that report?
 18 MR. FINKELSTEIN: Scope.
 19 THE WITNESS: I don't know. I
 20 don't know.
 21 (Prevoznik Plaintiff's Exhibit
 22 P27 marked for identification.)
 23 QUESTIONS BY MR. FARRELL:
 24 Q. I'm going to have marked as
 25 Plaintiff's Exhibit 27 and circulate a

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1 I did not understand that when
 2 you made an objection for scope that
 3 we needed to preserve the right to be
 4 able to -- that I was waiving my right
 5 to have that objection ruled or
 6 overruled.
 7 So I disagree that every time
 8 the Department of Justice makes an
 9 objection on scope that transforms the
 10 witness from a Rule 30(b)(6) designee
 11 into a witness testifying in his own
 12 capacity, because we did not notice
 13 the deposition of Mr. Prevoznik in his
 14 individual capacity. We noticed
 15 him -- we noticed the DEA put a
 16 witness up in its capacity.
 17 That being said, perfectly
 18 willing to allow the record to be
 19 preserved with appropriate objections
 20 to be addressed with Judge Polster,
 21 but I believe Judge Polster has the
 22 ultimate say in whether or not our
 23 questions are admissible and whether
 24 or not they fall inside or outside of
 25 the scope of the 30(b)(6) notice.

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1 MR. FINKELSTEIN: So my
 2 response would be if Judge Polster
 3 disagrees with my objections, then
 4 Judge Polster will make appropriate
 5 rulings.
 6 If you disagree with my
 7 objections, my proposal would be to
 8 review the objections I've made at a
 9 break, and we can take them up with
 10 the Special Master as necessary.
 11 MR. FARRELL: All right. We've
 12 been going for an hour, so maybe this
 13 is the right time to take a quick
 14 break.
 15 VIDEOGRAPHER: We're going off
 16 the record. The time is 9:12.
 17 (Off the record at 9:12 a.m.)
 18 VIDEOGRAPHER: We are back on
 19 record. Beginning of Media File 2.
 20 The time is 9:27.
 21 SPECIAL MASTER COHEN: So with
 22 regard to the issue that came up just
 23 before we went off the record, I think
 24 to make the record clear as we go
 25 forward, it would help if, rather than

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1 THE WITNESS: Yes.
 2 SPECIAL MASTER COHEN:
 3 Everybody understand that? Any
 4 questions?
 5 MS. SINGER: Nope.
 6 MR. FINKELSTEIN: I'm happy to
 7 expand on my objections, and I'm happy
 8 to explain them as necessary.
 9 SPECIAL MASTER COHEN: No, we
 10 can do it in shorthand. I just want
 11 to make sure we understand things,
 12 that we're all on the same page going
 13 forward.
 14 Okay?
 15 MS. MAINIGI: There will be no
 16 ruling on those objections?
 17 SPECIAL MASTER COHEN: Correct.
 18 EXAMINATION
 19 QUESTIONS BY MS. SINGER:
 20 Q. All right. Good morning,
 21 Mr. Prevoznik. Mr. Farrell was nice enough
 22 to cover some of the things I was planning
 23 to, so we're going to shorthand our way
 24 through some of the opening topics.
 25 Now, remind the jury, how long

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1 merely saying "scope," when the DEA
 2 has an objection that the answer is
 3 outside the scope of Touhy authority,
 4 that you just say that, "outside the
 5 scope of Touhy authority."
 6 With regard to the question of
 7 whether it is outside the scope of
 8 Touhy authority, I think the Court
 9 does retain jurisdiction to make that
 10 determination in the final event, as
 11 with any objection.
 12 And I will add that my own
 13 understanding is that it's unclear
 14 exactly whether a witness is allowed
 15 to answer questions even though he
 16 doesn't have authority under Touhy. I
 17 think that's actually an open question
 18 legally. But in any event, we don't
 19 have to address that question now.
 20 So when you are directed,
 21 Mr. Prevoznik, to answer only within
 22 the scope of your personal knowledge
 23 and not as a -- with DEA authority,
 24 that's what we'll assume you're doing.
 25 Okay?

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1 have you been with the DEA?
 2 A. Over 28 years.
 3 Q. Okay. And during the course of
 4 your 20 years with the DEA, I imagine that
 5 the drugs being diverted may have changed; is
 6 that correct?
 7 A. Yeah, that's trend shifts.
 8 Q. And the means of diverting
 9 those drugs may have changed over time as
 10 well?
 11 A. Yes.
 12 Q. And the focus of DEA's
 13 enforcement activities may have changed also
 14 during that time; is that correct?
 15 A. Correct.
 16 Q. But the DEA's rules and
 17 expectations with respect to the Controlled
 18 Substances Act and CFR 1301.74, those have
 19 remained the same, have they not?
 20 MS. MAINIGI: Objection.
 21 THE WITNESS: Yes.
 22 (Prevoznik Plaintiff's Exhibit
 23 P29 marked for identification.)
 24 QUESTIONS BY MS. SINGER:
 25 Q. All right. So we're going to

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1 go quickly through the guidelines you talked
 2 about. We're going to start with a
 3 shorthand. And the first refers to what we
 4 marked as Exhibit 18, is the backup for that.
 5 So here you'll see the NWDA
 6 suspicious order monitoring system, which we
 7 were shown as Exhibit 18.
 8 Is that familiar to you?
 9 A. Yes.
 10 Q. Okay. So in 1984 --
 11 MR. FINKELSTEIN: I'm sorry,
 12 Counsel, is this 18 or 29?
 13 MS. SINGER: I think it's 18.
 14 MR. FINKELSTEIN: It's marked
 15 as 29.
 16 MS. SINGER: I'm sorry. Oh,
 17 I'm sorry, the new exhibit is 29. The
 18 backup of the whole policy is
 19 Exhibit 18.
 20 MR. FINKELSTEIN: Okay.
 21 QUESTIONS BY MS. SINGER:
 22 Q. Okay. And just directing your
 23 attention very quickly to 2, sub 2, on your
 24 monitor -- I'm sorry, 9 on your monitor,
 25 single suspicious orders, is it correct that

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1 QUESTIONS BY MS. SINGER:
 2 Q. And do ILRs relieve a
 3 registrant -- does submitting ILRs relieve a
 4 registrant of the obligation to report
 5 suspicious orders?
 6 MS. MAINIGI: Objection.
 7 THE WITNESS: No.
 8 QUESTIONS BY MS. SINGER:
 9 Q. All right. The next marker,
 10 1987, is that seminar report which was
 11 Prevoznik 17, and that established any system
 12 must be capable of both detecting individual
 13 orders or -- which are suspicious orders,
 14 which become suspicious over time due to
 15 frequency, quantity or pattern.
 16 Is that consistent with the
 17 DEA's policy?
 18 A. Yes.
 19 Q. And the DEA pointed out that
 20 the company is still responsible under their
 21 registrations for acting in the public
 22 interest, reporting the order does not in any
 23 way relieve the firm from the responsibility
 24 for the shipment.
 25 Does that also reflect the

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1 this suspicious order monitoring system
 2 publication from 1984 established that
 3 "single orders of unusual size or deviation
 4 must be reported immediately, the submission
 5 of monthly printout of after-the-fact sales
 6 will not relieve a registrant from the
 7 responsibility of reporting these single
 8 excessive or suspicious orders. DEA has
 9 interpreted orders to mean prior to
 10 shipment?"
 11 Does that accurately reflect
 12 the policy of the DEA?
 13 A. Yes.
 14 Q. And that's as of 1984, correct?
 15 A. Correct.
 16 Q. All right. Turning next to
 17 1987 is our next marker in the timeline.
 18 And I'm sorry, just to be
 19 perfectly clear, from 1971 to the present,
 20 when the Controlled Substances Act was first
 21 enacted in '71, has it been the DEA's
 22 position that ILRs are not suspicious order
 23 reports?
 24 MS. MAINIGI: Objection.
 25 THE WITNESS: Yes.

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1 DEA's policy consistently over time?
 2 MS. MAINIGI: Objection.
 3 MR. O'CONNOR: Objection.
 4 THE WITNESS: Yes.
 5 (Prevoznik Plaintiff Exhibit
 6 P33 marked for identification.)
 7 QUESTIONS BY MS. SINGER:
 8 Q. Okay. I want to turn next to a
 9 new document, and that's the DEA's Diversion
 10 Investigators Manual.
 11 Can we mark this as -- what are
 12 we up to?
 13 MR. FINKELSTEIN: 30.
 14 MS. SINGER: Thank you.
 15 (Prevoznik Exhibit 33 marked
 16 for identification.)
 17 MR. FINKELSTEIN: Is there no
 18 28? Have we skipped 28? I don't
 19 mind. I just want to make sure I have
 20 everything.
 21 QUESTIONS BY MS. SINGER:
 22 Q. Mr. Prevoznik, showing you
 23 Exhibit 33. Do you recognize this document?
 24 A. Yes.
 25 Q. And what do you recognize that

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1 document to be?
 2 MS. MAINIGI: Excuse me,
 3 Counsel. May I have a copy?
 4 QUESTIONS BY MS. SINGER:
 5 Q. What do you recognize that
 6 document to be?
 7 A. DEA's Diversion Investigators
 8 Manual.
 9 Q. And what is that -- what is the
 10 Diversion Investigators Manual used for?
 11 MR. EPPICH: Objection. Form.
 12 THE WITNESS: It's used to
 13 guide us, diversion investigators, on
 14 how to do our jobs.
 15 QUESTIONS BY MS. SINGER:
 16 Q. Okay. And so that is internal
 17 guidance provided by the DEA to its diversion
 18 investigators, correct?
 19 A. Correct.
 20 Q. Okay. And do you know the year
 21 of that version of the manual?
 22 And again, it's not a quiz.
 23 Does it seem like 1990, which was the
 24 information provided to us, is accurate?
 25 MR. EPPICH: Objection. Calls

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1 A. Yep.
 2 Q. All right. Can you read the
 3 third paragraph beginning "registrants"?
 4 A. "Registrants who routinely
 5 report suspicious orders, yet fill these
 6 orders with reason to believe they are
 7 destined for the illicit market, are
 8 expressing an attitude of irresponsibility
 9 that is a detriment to the public health and
 10 safety as set forth in 21 USC 823 and 824."
 11 Q. And 21 USC 823 and 824 the
 12 Controlled Substances Act?
 13 A. Yes.
 14 Q. Okay. And does that statement
 15 that you just read accurately reflect the
 16 policy of the DEA in 1990?
 17 A. Yes.
 18 Q. And has that remained true
 19 since then?
 20 A. Yes.
 21 Q. Okay. And then read from there
 22 "suspicious orders"?
 23 A. "Suspicious orders include
 24 those which are in excess of legitimate
 25 medical use or exhibit characteristics

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1 for speculation.
 2 THE WITNESS: Yes.
 3 QUESTIONS BY MS. SINGER:
 4 Q. Okay. And is the Diversion
 5 Investigators Manual updated periodically by
 6 the DEA?
 7 A. Yes.
 8 Q. And do you know whether at
 9 least parts of the Diversion Investigators
 10 Manual have been provided to distributors
 11 through public record requests?
 12 MS. MAINIGI: Objection.
 13 Scope. Or outside Touhy
 14 authorization.
 15 THE WITNESS: I don't know.
 16 QUESTIONS BY MS. SINGER:
 17 Q. Okay. All right. I'd like to
 18 turn your attention to Section 5126, which is
 19 Bates number ending 301.
 20 And I'm sorry, the Bates number
 21 for this document is CAH_MDL_PRIOR
 22 PRODUCTION_DEA07_01176247.
 23 All right. So turning to 301,
 24 which I think has been tabbed in your copy,
 25 Mr. Prevoznik.

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1 leading to possible diversion, such as orders
 2 of unusual size, unusual frequency, or those
 3 deviating substantially from the -- from a
 4 normal pattern."
 5 Q. And keep going.
 6 A. "The supplier can determine
 7 whether the order is excessive by checking
 8 their own sales and establishing the average
 9 amount of controlled substances shipped to
 10 registrants of the same apparent size in a
 11 particular geographic area. If the customer
 12 exceeds this threshold, the request should be
 13 viewed as suspicious."
 14 Q. One more sentence.
 15 A. "This activity over extended
 16 periods of time would lead a reasonable
 17 person to believe that controlled substances
 18 possibly are being diverted."
 19 Q. And does the passage you just
 20 read again reflect the DEA's policy?
 21 A. Yes.
 22 MR. EPPICH: Form.
 23 QUESTIONS BY MS. SINGER:
 24 Q. And has that policy remained
 25 the same since 1990 when this manual was

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1 issued?
 2 MS. FUMERTON: Object to form.
 3 THE WITNESS: Yes.
 4 (Prevoznik Plaintiff's Exhibit
 5 P34 marked for identification.)
 6 QUESTIONS BY MS. SINGER:
 7 Q. Okay. Now, moving to the next
 8 version of the -- of the Diversion
 9 Investigators Manual, we're going to mark
 10 that Exhibit 34.
 11 And, Mr. Prevoznik, we only
 12 have a piece of that manual.
 13 Do you recognize the document
 14 that I've just shown you as Exhibit 34?
 15 A. Yes.
 16 Q. And what do you recognize that
 17 document to be?
 18 A. As being a section from our --
 19 the Diversion Investigators Manual.
 20 Q. Okay.
 21 A. DEA.
 22 Q. And with respect to its
 23 provisions on suspicious orders, which are
 24 the first paragraph of Section 5126, is that
 25 the same as what you just read previously?

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1 QUESTIONS BY MS. SINGER:
 2 Q. Mr. Prevoznik, just to clarify
 3 for Cardinal's counsel's benefit, do you
 4 recognize this from the materials you
 5 reviewed in preparation for your deposition?
 6 A. Yes.
 7 Q. Okay. And do you know if this
 8 was part of the binder that was provided to
 9 counsel in advance of your deposition?
 10 A. Yes.
 11 Q. Okay. So can you read aloud
 12 that first paragraph?
 13 A. "Registrants are required to
 14 inform DEA of suspicious orders in accordance
 15 with 21 CFR 1301.74(b). DEA field offices
 16 are not to approve or disapprove supplier
 17 shipments of controlled substances. The
 18 responsibility for making the decision to
 19 ship rests with the supplier. An exception
 20 to this occurs when a supplier" --
 21 Q. You can stop there.
 22 A. Okay.
 23 Q. All right. And the section you
 24 just read, does that reflect DEA's policy?
 25 MS. MAINIGI: Objection.

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1 A. I'm sorry, which paragraph?
 2 MR. EPPICH: Object to form.
 3 THE WITNESS: "Registrants"?
 4 QUESTIONS BY MS. SINGER:
 5 Q. I'm sorry. I don't have it up
 6 on my monitor, so...
 7 MS. MAINIGI: Counsel, may I
 8 ask why this document is not
 9 Bates-stamped?
 10 MS. SINGER: Excuse me?
 11 MS. MAINIGI: Why is this
 12 document not Bates-stamped?
 13 MS. SINGER: I don't know.
 14 Because it came from the DEA. I think
 15 the reliance materials for
 16 Mr. Prevoznik.
 17 MS. MAINIGI: Is that in fact a
 18 representation you're making?
 19 MS. SINGER: Excuse me?
 20 MS. MAINIGI: Is that in fact a
 21 representation that you know for
 22 certain, or are you guessing?
 23 MS. SINGER: So you can ask
 24 your questions in your time.
 25

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1 THE WITNESS: Yes.
 2 QUESTIONS BY MS. SINGER:
 3 Q. And do you know, by the way,
 4 the date of this version of the Diversion
 5 Investigators Manual?
 6 A. I can tell from the -- there
 7 was an update on 4/16 of 1996.
 8 Q. Okay. And then if you go down
 9 to the third paragraph, "Registrants who
 10 routinely report suspicious orders," is that
 11 the same language that you read previously?
 12 MR. EPPICH: Object to form.
 13 THE WITNESS: Yes.
 14 (Prevoznik Plaintiff's Exhibit
 15 P35 marked for identification.)
 16 QUESTIONS BY MS. SINGER:
 17 Q. Okay. All right. Let's turn
 18 now to Exhibit 35.
 19 All right. And this is --
 20 MR. FINKELSTEIN: While this is
 21 being handed out, since we talked
 22 about the reliance materials, I note
 23 that the witness doesn't have a copy
 24 of his reliance materials in front of
 25 him and that I ask that he be provided

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1 with that at some point.
 2 We left it with the court
 3 reporter. That was his reliance
 4 binder.
 5 MS. SINGER: So because we have
 6 a different court reporter, I don't
 7 think we have it. If -- we can try to
 8 muster an additional copy, but any
 9 document I show him, we will have
 10 today.
 11 MR. FINKELSTEIN: Okay.
 12 QUESTIONS BY MS. SINGER:
 13 Q. All right. So Exhibit 35 is
 14 the NWDA Controlled Substances Manual, Bates
 15 number HDA_MDL_000219360.
 16 Mr. Prevoznik, have you seen
 17 that document before?
 18 A. It looks familiar.
 19 Q. Okay. Now, I want to show you
 20 also -- we're going to mark this Exhibit 36.
 21 (Prevoznik Plaintiff's Exhibit
 22 P36 marked for identification.)
 23 QUESTIONS BY MS. SINGER:
 24 Q. Exhibit 36 is from a website.
 25 It's titled "NWDA Develops DEA Compliance

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1 this doc -- when this press release was
 2 issued?
 3 MS. MAINIGI: Objection to the
 4 use of this document. Objection.
 5 Foundation. Scope.
 6 THE WITNESS: I'm not sure what
 7 you mean by the term "aggressively."
 8 We were doing our job, so that
 9 wouldn't...
 10 QUESTIONS BY MS. SINGER:
 11 Q. All right. And then going down
 12 to the third paragraph -- or fourth
 13 paragraph -- you know what? We're going to
 14 leave that one there. Let's move on. Let's
 15 go back to the manual itself, Exhibit 34.
 16 So I want to turn first to --
 17 MR. FINKELSTEIN: 34 or 35?
 18 THE WITNESS: 35?
 19 QUESTIONS BY MS. SINGER:
 20 Q. 35, thank you.
 21 -- to Bates number 435, which
 22 is tabbed in your copy. It's titled
 23 "Suspicious Orders - Controlled Substances."
 24 Let me know when you've found
 25 it.

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1 Institute to Reduce Industry Exposure to
 2 Fines."
 3 All right. Giving you a second
 4 to look at the document, I just want to read
 5 aloud the first paragraph.
 6 "In response to increasingly
 7 complex regulations, aggressive enforcement
 8 and the potential for fines, the National
 9 Wholesale Druggists' Association, NWDA, has
 10 developed an industry institute on DEA
 11 compliance," continued.
 12 Would you agree that the DEA
 13 had been aggressively enforcing --
 14 MS. MAINIGI: Objection to the
 15 use of this document.
 16 MS. SINGER: I haven't even
 17 finished --
 18 MS. MAINIGI: I'm sorry. Go
 19 ahead.
 20 MS. SINGER: -- a question.
 21 MS. MAINIGI: Sorry.
 22 QUESTIONS BY MS. SINGER:
 23 Q. Would you agree that the DEA
 24 was aggressively or actively enforcing the
 25 Controlled Substances Act in 1997 when

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1 A. Yep, I'm good.
 2 Q. Okay.
 3 MS. MAINIGI: I'm sorry,
 4 Counsel, what's the page number?
 5 MS. SINGER: 435.
 6 QUESTIONS BY MS. SINGER:
 7 Q. It says there, "Distributors
 8 are responsible for designing and operating a
 9 system that will disclose to the distributor
 10 suspicious orders."
 11 Do you agree that that is the
 12 distributor's responsibility?
 13 A. Yes.
 14 Q. Okay. And then the note, "Many
 15 distributors have been cited for failing to
 16 establish and maintain such a system."
 17 Is that also accurate?
 18 A. Yes.
 19 MS. MAINIGI: Objection.
 20 MR. EPPICH: Form.
 21 QUESTIONS BY MS. SINGER:
 22 Q. Move to the next paragraph.
 23 "Distributor establishing suspicious order
 24 criteria. Distributors should establish
 25 written criteria of what constitutes a

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1 suspicious order. DEA leaves it to the
 2 distributor to make this determination. The
 3 key for the distributor is to establish
 4 reasonable criteria based upon customer
 5 purchasing patterns and then to adhere to
 6 them in monitoring orders."
 7 Does that several-step passage
 8 that I just read accurately reflect a
 9 distributor's duties under the CSA?
 10 MS. MAINIGI: Objection.
 11 Foundation. Scope. Form.
 12 MR. EPPICH: Objection.
 13 THE WITNESS: Yes.
 14 QUESTIONS BY MS. SINGER:
 15 Q. And do you see in this
 16 description of suspicious order criteria any
 17 expression of confusion or lack of clarity
 18 about what a suspicious order is?
 19 MR. EPPICH: Object to form.
 20 MS. MAINIGI: Objection.
 21 Foundation.
 22 THE WITNESS: No.
 23 QUESTIONS BY MS. SINGER:
 24 Q. And then moving to the next
 25 page, Bates number 436, you see the bullet

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1 Q. Is it DEA's position that a
 2 fixed multiplier of order levels is
 3 sufficient as a system to identify suspicious
 4 orders?
 5 MR. EPPICH: Object to form.
 6 THE WITNESS: It could be one
 7 criteria, but it can't be the only
 8 one.
 9 QUESTIONS BY MS. SINGER:
 10 Q. Okay. And it says here, if you
 11 keep reading on, "After the monitoring
 12 program has been tested with live data and
 13 the results analyzed, it may be necessary to
 14 revise the factors."
 15 Is it DEA's position that
 16 distributors have an obligation to make sure
 17 that any trigger or threshold they use
 18 actually identifies suspicious orders?
 19 MS. MAINIGI: Objection.
 20 MR. FINKELSTEIN: Object to
 21 form.
 22 MS. MAINIGI: Form. Scope.
 23 THE WITNESS: Yes.
 24 QUESTIONS BY MS. SINGER:
 25 Q. Okay. Moving next to Bates

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1 that begins, "Establish trigger levels"?
 2 About middle of the page.
 3 A. Yes.
 4 Q. Okay. So it says here,
 5 "Establish trigger levels, close quote, that
 6 only kick out purchasers buying substantially
 7 above the average for an item. The trigger
 8 level is established by multiplying the
 9 calculated average by an arbitrary factor.
 10 It is recommended that at the outset three
 11 times the average be used for ARCOS items and
 12 four times the average for non-ARCOS items."
 13 Do you see where I've just
 14 read?
 15 A. Yes.
 16 Q. Okay. Is it DEA's position
 17 that a fixed multiplier is a sufficient
 18 system to identify suspicious orders?
 19 MR. EPPICH: Object to form.
 20 MS. MAINIGI: Foundation.
 21 Scope.
 22 THE WITNESS: Could you please
 23 repeat it?
 24 MS. SINGER: Yes.
 25 QUESTIONS BY MS. SINGER:

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1 number 437. Do you see the note is -- why
 2 don't you go ahead and read that note.
 3 "It is DEA's position."
 4 A. "It is DEA's position that
 5 after-the-fact monitoring program as
 6 previously described, whether computer or
 7 manual, does not relieve the distributor of
 8 responsibility for policing individual orders
 9 that appear excessive."
 10 Q. Keep going.
 11 A. "In these situations, DEA
 12 should be notified before the order is
 13 shipped, and a copy of all such orders should
 14 be maintained in the distributor's suspicious
 15 orders file, with a notation reflecting the
 16 date and person contacted at DEA as well as
 17 any guidance received."
 18 Q. Go ahead and finish the
 19 paragraph, please.
 20 A. "The file also should indicate
 21 whether the order was shipped. DEA usually
 22 leaves the responsibility for determining
 23 whether to ship to the distributor."
 24 **Q. And does this statement that**
 25 **you just read from the NWDA manual of 1997**

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1 accurately describe the DEA's position on
 2 what distributors should be -- or what
 3 registrants should be doing?
 4 MS. MAINIG: Objection.
 5 **THE WITNESS: Yes.**
 6 QUESTIONS BY MS. SINGER:
 7 Q. All right. And then I want you
 8 to turn to the chemical control program at
 9 Appendix L. So that, I think, should be
 10 marked by the last tab. Nope. Nope.
 11 There's one more, I'm sorry. So L6, yes,
 12 which is Bates number 571.
 13 Do you see the heading there
 14 "Suspicious Orders"?
 15 MR. FINKELSTEIN: 571. 69, 71.
 16 THE WITNESS: Okay.
 17 QUESTIONS BY MS. SINGER:
 18 Q. All right. So the heading
 19 there says, "Suspicious Orders," but it's
 20 under 21 CFR 1310.05, correct?
 21 A. Correct.
 22 Q. And that's the provision that
 23 relates to suspicious orders of List I
 24 chemicals; is that correct?
 25 A. Correct.

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1 frequency."
 2 Q. Okay. Keep going all the way
 3 to the end of that paragraph.
 4 A. 21 CFR 1301.74(b).
 5 "Registrants should set thresholds as a first
 6 step in identifying potential suspicious
 7 orders. However, registrants should refrain
 8 from reporting all orders above the threshold
 9 without a further review of the order or
 10 customer. DEA expects that registrants will
 11 only report orders that the registrant has
 12 determined to be truly suspicious."
 13 Q. And does the section you just
 14 read reflect the policy of the DEA that
 15 registrants should be reporting orders that
 16 it deems suspicious?
 17 MS. MAINIG: Objection.
 18 THE WITNESS: Yes.
 19 (Prevoznik Plaintiff's Exhibit
 20 P37 marked for identification.)
 21 QUESTIONS BY MS. SINGER:
 22 Q. All right. Let's move next to
 23 Exhibit 37. We have a lot of paper today.
 24 Exhibit 37 is Bates number
 25 CAH_MDL_PRIOR PRODUCTION_DEA07_01178834, and

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1 Q. Okay. And there it -- the
 2 first sentence reads, "DEA has not provided a
 3 clear definition of what constitutes a
 4 suspicious order."
 5 Now that relates to a
 6 suspicious order of List I chemicals,
 7 correct?
 8 A. Correct.
 9 Q. Okay. And there NWDA is saying
 10 we don't have a clear definition, correct?
 11 A. Correct.
 12 Q. And we didn't see that earlier
 13 in the manual, correct?
 14 A. Correct.
 15 Q. All right. Then let's move to
 16 Appendix M, which is one more page. Bates
 17 number 574, number 7: "What does DEA
 18 consider to be a suspicious order?"
 19 And if you can read that first
 20 sentence?
 21 A. "A registrant must report a
 22 suspicious order for controlled substances,
 23 which DEA defines as an order of unusual
 24 size, orders deviating substantially from a
 25 normal pattern and orders of unusual

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1 it's titled "DEA Compliance Manual, Cardinal
 2 Health."
 3 Mr. Prevoznik, have you seen
 4 this document before?
 5 A. No.
 6 Q. Okay. I just want to point you
 7 to a few pages. Let's turn first to
 8 Bates number 880, which is also tabbed in
 9 your copy.
 10 Tell me when you're there.
 11 A. I'm there.
 12 Q. Okay. So it says, "Complying
 13 with 21 CFR 1301.74(b) is a two-step process.
 14 First, each Cardinal division submits to DEA
 15 on a monthly basis an ingredient limit
 16 report."
 17 Have I read that correctly?
 18 A. Yes.
 19 Q. Okay. And then it goes down to
 20 the next paragraph. "Second, on a daily
 21 basis, cage and vault personnel" --
 22 Do you know what that means?
 23 A. Yes.
 24 Q. What is that?
 25 A. It's the person -- the people

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1 that were -- that are authorized to work in
 2 the cage or the vault, which are the secure
 3 areas that contain the controlled substances.
 4 Q. Okay.
 5 -- "should be policing and
 6 identifying individual orders that appear
 7 excessive in relation to what other customers
 8 are buying and/or the customer's purchase
 9 history. In most situations, DEA should be
 10 notified, if possible, before the order is
 11 shipped, and a copy of all such orders should
 12 be maintained in the division's suspicious
 13 order file, along with a regulatory agency
 14 contact form, Form 1, noting any specific
 15 instructions from DEA."
 16 Have I read that correctly?
 17 A. Yes.
 18 Q. Okay. And does this Cardinal
 19 compliance manual accurately reflect a
 20 registrant's obligation to notify DEA before
 21 a suspicious order is shipped?
 22 MS. MAINIGI: Objection.
 23 Outside the scope of the Touhy
 24 authorization. Form. Foundation.
 25 THE WITNESS: Well, the

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1 with Mr. Farrell was skipped over this time,
 2 the DEA Diversion Investigators Manual, the
 3 NWDA Controlled Substances Manual in 1997 and
 4 Cardinal's compliance manual.
 5 In each of those manuals, just
 6 to be clear, was it true that DEA and the
 7 industry recognized that suspicious orders
 8 must be reported immediately when they are
 9 discovered, not after they are shipped?
 10 MS. MAINIGI: Objection.
 11 Outside the scope of the Touhy
 12 authorization. Foundation. Form.
 13 THE WITNESS: Yes.
 14 QUESTIONS BY MS. SINGER:
 15 Q. And that suspicious -- that
 16 orders that a registrant identifies as
 17 suspicious cannot be shipped; is that
 18 correct?
 19 MS. MAINIGI: Objection. Form.
 20 Foundation.
 21 THE WITNESS: Correct.
 22 QUESTIONS BY MS. SINGER:
 23 Q. All right. Now, we think about
 24 suspicious orders under CFR 1301.74, but the
 25 registrant that ships suspicious orders also

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1 regulations require immediately upon
 2 discovery, so it's not...
 3 QUESTIONS BY MS. SINGER:
 4 Q. Okay. If that was added, that
 5 they should be notified -- that the DEA
 6 should be notified immediately before a
 7 suspicious order is shipped, would that be
 8 accurate?
 9 MS. MAINIGI: Objection -- same
 10 objections.
 11 THE WITNESS: Yes.
 12 QUESTIONS BY MS. SINGER:
 13 Q. Okay. And would DEA expect
 14 that a registrant would remain -- excuse me,
 15 would maintain copies of a suspicious order
 16 reported to the DEA?
 17 A. Yes.
 18 Q. Let's turn then to the next
 19 tab, which is -- oh, nope, we don't need to
 20 do that. Never mind.
 21 All right. Let's go back to
 22 the slides we started with.
 23 So, Mr. Prevoznik, we went
 24 through the NWDA suspicious order monitoring
 25 system, the seminar report that you went over

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1 fails to maintain effective controls to
 2 prevent diversion; is that correct?
 3 MR. MAHADY: Objection. Form.
 4 Objection. Foundation. Calls for a
 5 legal conclusion.
 6 THE WITNESS: Correct.
 7 QUESTIONS BY MS. SINGER:
 8 Q. And would it make sense to DEA
 9 that a registrant could identify an order as
 10 suspicious, report it to the DEA and then
 11 send it out to be sold or used?
 12 MR. EPPICH: Objection. Form.
 13 Calls for a legal conclusion.
 14 THE WITNESS: And not do
 15 anything to relieve the suspicion?
 16 QUESTIONS BY MS. SINGER:
 17 Q. That's right.
 18 A. No, they shouldn't --
 19 MR. EPPICH: Objection. Form.
 20 QUESTIONS BY MS. SINGER:
 21 Q. Can you say your answer again?
 22 A. Could you repeat your question?
 23 Q. Would it make sense to the DEA
 24 that a registrant could identify an order as
 25 suspicious, report it to the DEA, not dispel

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1 their suspicion, and then go ahead and ship
 2 it so that it could be sold or used?
 3 MR. EPPICH: Object to form.
 4 Calls for a legal conclusion.
 5 MS. MAINIGI: Incomplete
 6 hypothetical. Outside the scope.
 7 THE WITNESS: No, it would not
 8 be correct.
 9 QUESTIONS BY MS. SINGER:
 10 Q. Why?
 11 A. Because they're not maintaining
 12 effective controls over diversion.
 13 MS. MAINIGI: Same objections.
 14 QUESTIONS BY MS. SINGER:
 15 Q. And what happens if they go
 16 ahead and just ship that suspicious order?
 17 MS. MAINIGI: Same objections.
 18 MR. EPPICH: Object to the
 19 form. Calls for speculation.
 20 THE WITNESS: Well, it's --
 21 there was a -- there was a reason it
 22 triggered the suspicion, so the
 23 possibility or potential for it to be
 24 diverted into the illicit market is
 25 enhanced because it triggered a

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1 Objection to foundation.
 2 THE WITNESS: Yes.
 3 (Prevoznik Plaintiff's Exhibit
 4 P38 marked for identification.)
 5 QUESTIONS BY MS. SINGER:
 6 Q. Now, one of the -- during the
 7 first or second day of your deposition -- and
 8 let's turn to your deposition. I'm sure just
 9 what you want to relive.
 10 All right. So we'll mark this
 11 as Exhibit 38.
 12 And, Mr. Prevoznik, can I
 13 direct you -- and this is the deposition of
 14 Tom Prevoznik, April 17, 2019.
 15 All right. And if you could
 16 turn to page 171. All right. And I want to
 17 direct your attention to the middle of the
 18 page where you testify: "It was a business
 19 decision on whether to ship or not ship, that
 20 we, DEA, were not going to direct a
 21 registrant don't ship or not ship at that
 22 time."
 23 Do you see where I am?
 24 MS. FUMERTON: Objection.
 25 Form.

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1 suspicious order within their system.
 2 So that being the underlying
 3 cause for it to be triggered, that --
 4 the potential for it to be diverted,
 5 now it's going -- the potential now is
 6 greater that it's going into the
 7 public and is going to affect the
 8 public health and safety.
 9 QUESTIONS BY MS. SINGER:
 10 Q. Okay. And would going ahead
 11 and shipping suspicious orders demonstrate an
 12 attitude of irresponsibility, which I think
 13 is the language of the Diversion
 14 Investigators Manual, to the detriment of the
 15 public health?
 16 MS. MAINIGI: Objection.
 17 Outside the scope of Touhy
 18 authorization. Form.
 19 MR. EPPICH: Objection.
 20 THE WITNESS: Yes.
 21 QUESTIONS BY MS. SINGER:
 22 Q. And has that always been true,
 23 that shipping a suspicious order is a failure
 24 of effective controls to prevent diversion?
 25 MR. MAHADY: Objection to form.

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1 THE WITNESS: Yes.
 2 QUESTIONS BY MS. SINGER:
 3 Q. Okay. And then if you turn the
 4 page -- I'm sorry. At the bottom of
 5 page 171, because -- so in 7, it was clear
 6 that you were now directing registrants: Do
 7 not ship.
 8 And you said, right, because of
 9 the Internet.
 10 And then there's a question:
 11 "And prior to December 2007, it was a
 12 business decision by each registrant
 13 recognizing what their own obligations were,
 14 correct?"
 15 MR. EPPICH: Object to form.
 16 THE WITNESS: Yes.
 17 QUESTIONS BY MS. SINGER:
 18 Q. Have I read that accurately?
 19 A. Yes.
 20 Q. And I just want to be clear.
 21 Between -- before and after 2007, was it
 22 always the policy of the DEA that registrants
 23 could not ship suspicious orders?
 24 MR. EPPICH: Object to form.
 25 MS. MAINIGI: Objection. Form.

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1 Testimony speaks for itself.
 2 THE WITNESS: Yes.
 3 MR. MAHADY: Foundation.
 4 QUESTIONS BY MS. SINGER:
 5 Q. And when you talk about a
 6 change in 2007, you go on to say at the
 7 bottom of 172, "Well, I don't know if there
 8 was confusion or not because the -- quite a
 9 few registrants continue to do what they
 10 continue to do, which was continue to sell,
 11 to ignore suspicious orders, and they
 12 continue to sell huge volumes down the line
 13 through retail."
 14 Do you see what I've just read?
 15 A. Yes.
 16 Q. And I've read that accurately?
 17 A. Yes.
 18 Q. And is that the change you're
 19 referring to in 2007, was DEA's recognition
 20 that registrants continued to sell suspicious
 21 orders?
 22 MS. MAINIGI: Objection.
 23 Testimony speaks for itself.
 24 THE WITNESS: Yes. Because
 25 when we met with them in 2005, we

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1 subjective," right?
 2 Do you see where I am? Towards
 3 the bottom of the page?
 4 A. Yes.
 5 Q. And then on the next page you
 6 answered: "WITNESS: Yeah, it can be
 7 subjective." Top of page 185.
 8 Do you see where I am?
 9 A. Yes.
 10 Q. Okay. And I want to make sure
 11 that your testimony is clear. When you say
 12 whether a suspicious order is subjective, do
 13 you mean that it varies from case to case, or
 14 it depends on who's looking at it?
 15 MS. MAINIGI: Objection to
 16 form.
 17 THE WITNESS: Both, really. It
 18 depends who's looking at it and
 19 what system do they have that's
 20 triggering the suspicious order. So
 21 it's whatever that registrant
 22 designed, which is specific to that
 23 registration.
 24 QUESTIONS BY MS. SINGER:
 25 Q. Right.

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1 showed them their own data and said,
 2 "These are the things that we see,
 3 that we see as very suspicious."
 4 So we were telling the
 5 registrants up front, "Look, there is
 6 a problem. This is what we're
 7 seeing."
 8 And then they would say, "Yes,
 9 we want to be -- we want to fix this."
 10 And then we continued to see
 11 those same things continue for some of
 12 them. Some of them did correct it,
 13 but some of them continued to go and
 14 sell those things.
 15 QUESTIONS BY MS. SINGER:
 16 Q. Okay. And then continuing on
 17 in your testimony, page 184, you're talking
 18 in the middle of the page about the
 19 subjective of shipping, of determining a
 20 suspicious order.
 21 Do you see where I am in the
 22 middle of the page?
 23 A. Yes.
 24 Q. And Cardinal's counsel,
 25 Ms. Mainigi, asked you: "Because it's

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1 But a suspicious order is a
 2 suspicious order that's an order of unusual
 3 size -- you can say it better than I can, so
 4 please go ahead.
 5 MS. MAINIGI: Objection. Form.
 6 Foundation.
 7 THE WITNESS: Unusual --
 8 unusual size, deviating from a --
 9 substantially deviating from a normal
 10 pattern, and unusual frequency.
 11 QUESTIONS BY MS. SINGER:
 12 Q. Okay. And that's universally
 13 factually true, correct?
 14 MS. MAINIGI: Objection.
 15 Foundation. Vague. Outside scope.
 16 THE WITNESS: Correct. And
 17 it's disjunctive. So it could be one,
 18 it could be two, it could be other
 19 things that we've given guidance on.
 20 We gave guidance in the
 21 distributor initiative when we went
 22 through the various red flags. We put
 23 them in guidance letters as well -- or
 24 not guidance, reiteration of the
 25 regulations in 2006 and 2007 letters

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1 from Mr. Rannazzisi.
 2 QUESTIONS BY MS. SINGER:
 3 Q. And those criteria don't vary
 4 from registrant to registrant, correct?
 5 MR. EPPICH: Object to form.
 6 Vague.
 7 THE WITNESS: Correct.
 8 QUESTIONS BY MS. SINGER:
 9 Q. And what differs is whether an
 10 order triggers a suspicious [sic] based on a
 11 customer's history, their buying patterns,
 12 frequency, et cetera, correct?
 13 MR. EPPICH: Object to form.
 14 Vague.
 15 THE WITNESS: Yes, as well as
 16 the registrants, have they made any
 17 changes to the system.
 18 (Prevoznik Plaintiff's Exhibit
 19 P39 marked for identification.)
 20 QUESTIONS BY MS. SINGER:
 21 Q. Okay. Let's turn very quickly
 22 to the industry compliance guidelines.
 23 All right. I'm going to show
 24 you what's been marked as Exhibit 39.
 25 And this is Bates number

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1 due diligence in order to help support the
 2 security of the controlled substances they
 3 deliver to their customers."
 4 Do you see what I've just read?
 5 A. Yes.
 6 Q. And does the DEA agree with
 7 that statement?
 8 A. Yes.
 9 MS. MAINIGI: Objection.
 10 QUESTIONS BY MS. SINGER:
 11 Q. And did the DEA approve these
 12 industry compliance guidelines?
 13 A. No.
 14 Q. Now, I just want to go through
 15 some specifics with you very briefly, I hope,
 16 to see if the DEA agrees that these elements
 17 comply with the Controlled Substances Act.
 18 Let's start with Bates number 461.
 19 Does the DEA agree that a
 20 registrant should investigate a customer
 21 before agreeing to ship them controlled
 22 substances?
 23 MS. MAINIGI: Objection.
 24 MR. EPPICH: Objection. Form.
 25 THE WITNESS: Am I supposed to

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1 CAH_MDL2804_00988458.
 2 Mr. Prevoznik, have you seen
 3 this document before?
 4 A. Yes.
 5 Q. Okay. And do you recognize
 6 this to be the Healthcare Distribution
 7 Management Association's industry compliance
 8 guidelines?
 9 A. Yes.
 10 Q. Okay. And do you know -- I
 11 don't know if they have a date on them, but
 12 does it sound right that they were issued in
 13 2008?
 14 MR. EPPICH: Objection.
 15 Foundation. Calls for speculation.
 16 QUESTIONS BY MS. SINGER:
 17 Q. Or do you know what year they
 18 were issued?
 19 A. I don't know.
 20 Q. Okay.
 21 A. I don't know.
 22 Q. Okay. And if you look at the
 23 first page, the third paragraph: "At the
 24 center of a sophisticated supply chain,
 25 distributors are uniquely situated to perform

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1 be looking at something here or --
 2 QUESTIONS BY MS. SINGER:
 3 Q. No, just a general statement.
 4 A. Oh, okay.
 5 MR. EPPICH: Object to form.
 6 QUESTIONS BY MS. SINGER:
 7 Q. Do you want me to repeat the
 8 question, or do you have it?
 9 A. No. Repeat it.
 10 Q. Does the DEA agree that a
 11 registrant should investigate a customer
 12 before agreeing to ship them controlled
 13 substances?
 14 MR. EPPICH: Object to form.
 15 THE WITNESS: What do you mean
 16 by the term "investigate"? Know who
 17 they are?
 18 QUESTIONS BY MS. SINGER:
 19 Q. That they should know their
 20 customer.
 21 MR. EPPICH: Object to form.
 22 THE WITNESS: Yes.
 23 QUESTIONS BY MS. SINGER:
 24 Q. Okay. And in this guide, it
 25 lays out certain elements, including -- if

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1 you look towards the bottom of the page under
 2 the information-gathering step, would
 3 include -- I'm sorry, let's start at the top
 4 of the page.
 5 Under the first paragraph,
 6 Introduction: "Before opening an account" --
 7 do you see where I am?
 8 A. Yes.
 9 Q. -- "the distributor should,
 10 one, obtain background information on the
 11 customer and the customer's business; review
 12 that information carefully and, where
 13 appropriate, verify that information; and
 14 independently investigate the potential
 15 customer."
 16 Do you see what I've just read?
 17 A. Yes.
 18 Q. And does the DEA agree that
 19 those are appropriate and necessary steps for
 20 a registrant to take before shipping
 21 controlled substances?
 22 MR. EPPICH: Object to form.
 23 THE WITNESS: Yes.
 24 QUESTIONS BY MS. SINGER:
 25 Q. Okay. And then moving down the

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1 MR. EPPICH: Object to form.
 2 THE WITNESS: Yes.
 3 QUESTIONS BY MS. SINGER:
 4 Q. All right. And turning to the
 5 next page, identify -- bottom bullet:
 6 "Identification of physicians and other
 7 treatment centers that are the potential
 8 customer's most frequent prescribers or
 9 highest purchasing doctors."
 10 Do you see where I am?
 11 A. Yes.
 12 Q. And is that something that a
 13 registrant should be doing as well?
 14 MR. EPPICH: Object to form.
 15 THE WITNESS: Yes.
 16 QUESTIONS BY MS. SINGER:
 17 Q. Okay. Turning to the next
 18 page, independent investigation, subheading
 19 D, it says at the first line, "The
 20 distributor should independently investigate
 21 the potential customer as follows:" Checking
 22 with the local DEA office, state oversight
 23 authorities, DEA website and Federal
 24 Register, and conducting an Internet search.
 25 Do you see each of those

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1 page, second bullet talks about a background
 2 questionnaire.
 3 Do you see that?
 4 A. Yes.
 5 Q. And that should cover the
 6 average number of prescriptions filled each
 7 day, average number of CS item prescriptions
 8 filled each day.
 9 Do you see where I am?
 10 A. Yes.
 11 Q. And CS probably means
 12 controlled substances, yes?
 13 MR. EPPICH: Objection.
 14 Foundation. Calls for speculation.
 15 THE WITNESS: Yes. In my
 16 experience, yes.
 17 QUESTIONS BY MS. SINGER:
 18 Q. Okay. And then percentage of
 19 controlled substances purchased compared to
 20 overall purchases?
 21 A. Yes.
 22 Q. Would the DEA agree that those
 23 are things that a registrant should be
 24 looking at before shipping controlled
 25 substances to a new customer?

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1 elements?
 2 A. Yes.
 3 Q. And does the DEA agree that
 4 those are things that a responsible
 5 registrant should be doing before shipping
 6 controlled substances to a customer?
 7 MS. MAINIGI: Objection. Form.
 8 Foundation. Vague.
 9 THE WITNESS: Yes.
 10 QUESTIONS BY MS. SINGER:
 11 Q. And merely checking to see
 12 whether a customer has a DEA registration,
 13 would that be sufficient due diligence or
 14 knowing your customer?
 15 MR. EPPICH: Object to form.
 16 Calls for a legal conclusion.
 17 THE WITNESS: No.
 18 QUESTIONS BY MS. SINGER:
 19 Q. And it says here under
 20 Additional Recommendations and Documentation,
 21 the third bullet, "The performance and
 22 results of all steps in the customer review
 23 process should be fully documented as to each
 24 potential customer, and such documentation
 25 should be retained in an appropriate file."

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1 Do you see what I've just read?
 2 A. Yes.
 3 Q. And does the DEA also agree
 4 that that is an appropriate element, that
 5 documenting due diligence or knowing your
 6 customer is an appropriate element of that
 7 program?
 8 MR. EPPICH: Object to form.
 9 Calls for a legal conclusion.
 10 THE WITNESS: Yes.
 11 QUESTIONS BY MS. SINGER:
 12 Q. All right. Turning to 465, so
 13 two pages ahead, you see the section Develop
 14 Thresholds to Identify Orders of Interest?
 15 A. Yes.
 16 Q. Okay. So it says here that
 17 distributors -- I'm down at the second set of
 18 bullets, the bottom bullet: "Thresholds for
 19 all new customer accounts should be
 20 established at the lowest level indicated by
 21 information obtained during the know your
 22 customer due diligence review."
 23 Do you see where I've just
 24 read?
 25 A. Yes.

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1 QUESTIONS BY MS. SINGER:
 2 Q. And the registrant should be
 3 making its own judgment about what is not
 4 suspicious for a particular customer and not
 5 just accepting what they've previously
 6 ordered, correct?
 7 MR. EPPICH: Object to form.
 8 Calls for a legal conclusion.
 9 THE WITNESS: Correct.
 10 QUESTIONS BY MS. SINGER:
 11 Q. And they shouldn't be building
 12 in some excess above that level, correct?
 13 MR. EPPICH: Object to form.
 14 Calls for a legal conclusion.
 15 THE WITNESS: Yes.
 16 QUESTIONS BY MS. SINGER:
 17 Q. All right. And then looking at
 18 the section Cumulative Reviews/Thresholds,
 19 the industry compliance guidelines also
 20 indicate that "there should be a mechanism to
 21 compare percentages of orders for controlled
 22 substances, individual products and/or
 23 families to orders of noncontrolled substance
 24 prescription drugs so as to identify a shift
 25 in a customer's business focus that may

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1 Q. And does the DEA agree that
 2 that is appropriate?
 3 MR. EPPICH: Object to form.
 4 MS. MAINIGI: Objection.
 5 THE WITNESS: I guess my
 6 concern would be that if you're --
 7 what is the lowest level? Is it what
 8 the customer is reporting what they
 9 said they ordered or is it -- you
 10 know, it could be like really a large
 11 amount, or is the registrant saying
 12 this is what we are going to say is
 13 the lowest amount.
 14 So I have a little trouble with
 15 that one.
 16 QUESTIONS BY MS. SINGER:
 17 Q. Okay. So just making sure that
 18 we get this clear for the jury, the amount
 19 that a customer reports may be too high,
 20 correct?
 21 MR. EPPICH: Object to form.
 22 MS. MAINIGI: Objection.
 23 MR. EPPICH: Incomplete
 24 hypothetical.
 25 THE WITNESS: Yes.

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1 warrant further review."
 2 Do you see what I've just read?
 3 A. Yes.
 4 Q. And does the DEA agree that a
 5 registrant should not just be looking at a
 6 customer's controlled substances orders but
 7 their controlled substance orders relative to
 8 other products they're ordering?
 9 MR. EPPICH: Object to form.
 10 Calls for a legal conclusion.
 11 THE WITNESS: Yes.
 12 QUESTIONS BY MS. SINGER:
 13 Q. All right. And then Bates
 14 number 466 under E, the last sentence:
 15 "Based on the distributor's knowledge of his
 16 or her customer's overall drug purchasing
 17 trends, information available from DEA and
 18 elsewhere, distributors are encouraged to
 19 allow for alternative criteria, in addition
 20 to those incorporated into the electronic
 21 system, to serve as indicators of an order of
 22 interest."
 23 Do you see what I've just read?
 24 A. Yes.
 25 Q. And is it DEA's view that --

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1 and I think you testified to this earlier --
 2 that a registrant should be looking at other
 3 indicators of suspicion, not just an order
 4 history? Correct?
 5 MR. EPPICH: Object to form.
 6 THE WITNESS: Yes.
 7 QUESTIONS BY MS. SINGER:
 8 Q. And is the DEA aware that
 9 distributors have sales representatives or
 10 account managers who visit pharmacies, for
 11 instance?
 12 MR. EPPICH: Object to form.
 13 Foundation.
 14 THE WITNESS: Yes.
 15 MS. MAINIGI: Scope.
 16 QUESTIONS BY MS. SINGER:
 17 Q. And should distributors be
 18 looking at the -- should they be
 19 incorporating or factoring the observations
 20 of their account managers or sales reps into
 21 their evaluation of customers and their
 22 orders?
 23 MR. EPPICH: Object to form.
 24 Calls for a legal conclusion.
 25 Foundation.

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1 MR. EPPICH: Object to form.
 2 Calls for a legal conclusion.
 3 MR. MAHADY: Foundation.
 4 THE WITNESS: Correct.
 5 QUESTIONS BY MS. SINGER:
 6 Q. All right. Next page, the top
 7 of the page: "It's recommended that the
 8 distributor designate a person with suitable
 9 training and experience to investigate orders
 10 of interest."
 11 Do you see what I've just read?
 12 A. Yes.
 13 Q. And does the DEA agree that a
 14 registrant should have appropriately trained
 15 and experienced compliance staff executing
 16 its suspicious order monitoring and due
 17 diligence process?
 18 MR. EPPICH: Objection.
 19 MS. MAINIGI: Objection. Form.
 20 MR. EPPICH: Foundation.
 21 THE WITNESS: Yes.
 22 QUESTIONS BY MS. SINGER:
 23 Q. All right. Bates number 468,
 24 subsection D, Documentation, it says under
 25 that, "All investigations should be fully

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1 THE WITNESS: Yes. But I would
 2 also -- they're drivers as well,
 3 because it's on a daily basis they're
 4 in the pharmacies.
 5 QUESTIONS BY MS. SINGER:
 6 Q. Okay. All right. And then
 7 looking at the bottom of the page, still at
 8 Bates number 466, "The drug or drugs that
 9 cause an order to become an order of interest
 10 should not be shipped to the customer placing
 11 the order while the order is an order of
 12 interest."
 13 Do you see what I've just read
 14 there?
 15 A. Yes.
 16 Q. And do you understand that to
 17 be saying that while an order is being
 18 evaluated as to whether it's suspicious, it
 19 should not be shipped?
 20 A. Yes.
 21 MS. MAINIGI: Objection. Form.
 22 QUESTIONS BY MS. SINGER:
 23 Q. And it -- again, that is the --
 24 that is what the Controlled Substances Act
 25 requires, correct?

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1 documented, and all records of the
 2 investigation should be retained in an
 3 appropriate location within the firm, such as
 4 with other records relating to the particular
 5 customer."
 6 Does the DEA agree with that
 7 element of a compliant suspicious order
 8 monitoring program?
 9 MR. EPPICH: Object to form.
 10 Calls for a legal conclusion.
 11 THE WITNESS: Yes.
 12 QUESTIONS BY MS. SINGER:
 13 Q. And in the middle of the next
 14 paragraph: "The documentation should include
 15 a clear statement of the final conclusion of
 16 the investigation, including why the order
 17 investigated was or was not determined to be
 18 suspicious. That statement should be signed
 19 and dated by the reviewer. Copies of any
 20 written information provided by the customer
 21 should also be retained as part of the
 22 documentation of the investigation."
 23 Does the DEA agree that's
 24 appropriate?
 25 MR. EPPICH: Objection to form.

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1 Calls for a legal conclusion.
 2 THE WITNESS: Yes.
 3 QUESTIONS BY MS. SINGER:
 4 Q. All right. Very last paragraph
 5 on that page, "Orders that are determined to
 6 be suspicious should be reported to DEA under
 7 Section 1301.74(b) immediately upon being so
 8 determined."
 9 I think you've already
 10 testified that that's a requirement, correct?
 11 MR. EPPICH: Objection to form.
 12 THE WITNESS: Correct.
 13 QUESTIONS BY MS. SINGER:
 14 Q. "It is assumed that the order
 15 will continue to be placed on hold and/or
 16 canceled once it has been identified as
 17 suspicious."
 18 Is that also consistent with
 19 the DEA's interpretation of the Controlled
 20 Substance Act's requirements?
 21 MR. EPPICH: Objection to form.
 22 Calls for a legal conclusion.
 23 THE WITNESS: Yes.
 24 QUESTIONS BY MS. SINGER:
 25 Q. Now, if the -- if an order is

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1 QUESTIONS BY MS. SINGER:
 2 Q. And should the registrant be
 3 shipping that the next month?
 4 MR. EPPICH: Object to form.
 5 Calls for a legal conclusion.
 6 QUESTIONS BY MS. SINGER:
 7 Q. Without first dispelling the
 8 suspicion?
 9 MR. EPPICH: Object to form.
 10 Calls for a legal conclusion.
 11 Incomplete hypothetical.
 12 THE WITNESS: Yes, they should
 13 be relieving -- or ascertaining is
 14 there suspicion or not.
 15 QUESTIONS BY MS. SINGER:
 16 Q. And not shipping unless they
 17 eliminate the basis for that suspicion?
 18 A. Correct.
 19 MR. EPPICH: Objection to form.
 20 Calls for a legal conclusion.
 21 Incomplete hypothetical.
 22 QUESTIONS BY MS. SINGER:
 23 Q. 469, sub F, Future Customer
 24 Orders. "In instances where a distributor
 25 concludes that an order is or remains

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1 identified as suspicious and not shipped but
 2 held and then released the next month when a
 3 threshold is reset, does the DEA believe that
 4 the registrant is still shipping a suspicious
 5 order?
 6 MR. EPPICH: Objection to form.
 7 Calls for a legal conclusion and
 8 incomplete hypothetical.
 9 MS. MAINIGI: Outside the
 10 scope.
 11 THE WITNESS: Could you please
 12 repeat that?
 13 QUESTIONS BY MS. SINGER:
 14 Q. Now, if an order is identified
 15 as suspicious and not shipped but then held,
 16 you know, not shipped, held until the next
 17 month when a threshold resets, is that order
 18 still suspicious?
 19 MR. EPPICH: Objection to form.
 20 Calls for a legal conclusion and
 21 incomplete hypothetical.
 22 MR. FINKELSTEIN: Incomplete
 23 hypothetical.
 24 THE WITNESS: Yes.
 25

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1 suspicious after conducting an investigation,
 2 in addition to notifying DEA, it is
 3 recommended that the distributor evaluate its
 4 business relationship with the customer that
 5 placed that order."
 6 Do you see what I've just read?
 7 A. Yes.
 8 Q. "The distributor may consider
 9 whether to subject future orders from that
 10 same customer -- from that same customer for
 11 the same drug code product or all controlled
 12 substances to more rigorous scrutiny than was
 13 applied before the determination that the
 14 order is suspicious. The distributor may
 15 also consider whether to cease filling all
 16 future orders of that drug product code or
 17 all controlled substances placed by that
 18 customer."
 19 Does the DEA agree that when a
 20 registrant identifies a suspicious order,
 21 they should also be looking more generally at
 22 that customer?
 23 MS. MAINIGI: Objection to
 24 form.
 25 THE WITNESS: Yes.

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1 QUESTIONS BY MS. SINGER:
 2 Q. And making a decision as to not
 3 only whether to fill that order but to
 4 continue filling orders for that customer?
 5 MR. EPPICH: Object to form.
 6 Calls for a legal conclusion.
 7 THE WITNESS: Yes.
 8 QUESTIONS BY MS. SINGER:
 9 Q. All right. Bottom of page 469.
 10 An endless document for one so short. It
 11 says at the bottom bullet, "For example, the
 12 distributor may identify information that
 13 leads them to believe that a potential
 14 customer, prior to entering a formal business
 15 arrangement with that customer, may
 16 intend" -- on the next page -- "to order
 17 controlled substances -- controlled substance
 18 products with a frequency, volume or other
 19 indicator that could be considered
 20 suspicious. In such instances, the
 21 distributor should provide DEA with a report
 22 of this information under 21 CFR
 23 Section 1301.74(b)."
 24 Do you see what I've just read?
 25 A. Yes.

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1 THE WITNESS: Well, we have two
 2 different things going on. We have
 3 those that report to the field and
 4 those that have been under an action
 5 that is now dictated to go through
 6 electronically to headquarters.
 7 So, yes, if it's going to the
 8 office, that would be a great way to
 9 do it, to track that.
 10 QUESTIONS BY MS. SINGER:
 11 Q. Okay. And that C,
 12 Documentation, "All additional contact with
 13 DEA, either by telephone or in person, should
 14 be documented, and a record of the contact
 15 should be maintained."
 16 Does the DEA agree with that?
 17 A. Yes.
 18 Q. And is it fair to say that the
 19 DEA would agree that a registrant should be
 20 maintaining records of suspicious orders they
 21 report to the DEA?
 22 MR. EPPICH: Object to form.
 23 Calls for a legal conclusion.
 24 Foundation.
 25 THE WITNESS: Yes.

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1 Q. And would the DEA agree that if
 2 a distributor is evaluating a potential
 3 customer, sees indications that it may be
 4 engaged in diversion, it is not sufficient
 5 for the distributor to simply not do business
 6 with that customer, but that they should also
 7 be reporting that customer -- that potential
 8 customer to the DEA?
 9 MR. EPPICH: Object to form.
 10 Calls for a legal conclusion.
 11 THE WITNESS: Yes.
 12 QUESTIONS BY MS. SINGER:
 13 Q. All right. Subsection B on
 14 Bates number 470, under Correspondence For
 15 Reporting, "It is recommended that all
 16 correspondence to DEA containing reports of
 17 suspicious orders should be sent registered
 18 mail with a return receipt requested, by
 19 electronic mail or by another system that
 20 creates for the distributor a permanent
 21 record that DEA has received the
 22 notification."
 23 Does the DEA agree with that?
 24 MS. MAINIGI: Objection to
 25 form.

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1 QUESTIONS BY MS. SINGER:
 2 Q. So while registrants, in going
 3 through all of these different elements of
 4 the industry compliance guidelines, which
 5 we're now thankfully finished with, would the
 6 DEA agree that whatever suspicious order
 7 monitoring algorithm or system that a
 8 registrant uses, that all of these elements
 9 we just went through are elements of a
 10 responsible and compliant program to prevent
 11 diversion?
 12 MR. EPPICH: Object to form.
 13 Calls for a legal conclusion.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MS. SINGER:
 16 Q. All right.
 17 MR. FINKELSTEIN: Why don't we
 18 take a five-minute break.
 19 MS. SINGER: Can I do one more
 20 document that connects with this and
 21 then --
 22 MR. FINKELSTEIN: Okay. One
 23 more.
 24 MS. SINGER: Thank you.
 25 (Prevoznik Plaintiff's Exhibit

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1 P40 marked for identification.)
 2 QUESTIONS BY MS. SINGER:
 3 Q. All right. Mr. Prevoznik,
 4 Exhibit 40 is entitled "Draft DEA Comments
 5 From the 6-04-08 Meeting on Suspicious
 6 Orders." It's Bates number
 7 CAH_MDL2804_03234535.
 8 Have you seen this document?
 9 A. No.
 10 Q. Okay. Do you see here at the
 11 top of the document a list of DEA attendees?
 12 A. Yes.
 13 Q. And do you recognize those to
 14 be people who have worked for the DEA?
 15 A. Yes.
 16 Q. Okay. And do you recognize the
 17 HDMA attendees? Somebody from Williams &
 18 Connolly, people identified as with HDMA?
 19 A. I don't recognize the names.
 20 Q. Okay. All right. If you go
 21 down to the middle of the page, P.4,
 22 Item 1.B, it says, "DEA was pleased to see
 23 that the questionnaire would be notarized or
 24 provided with the statement declaring that it
 25 is true and correct. DEA does not want

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1 this document, which is Bates number 536, it
 2 says, "DEA seemed to think that, quote,
 3 thresholds, focus principally on volumes, and
 4 they express the view that an exclusive or
 5 even principal focus on volumes is
 6 inadequate."
 7 Is that consistent with the
 8 testimony you've given that just using volume
 9 thresholds aren't sufficient to identify
 10 suspicious orders?
 11 MR. FINKELSTEIN: The portion
 12 you read isn't in front of the
 13 witness.
 14 Do you know where she's reading
 15 from?
 16 THE WITNESS: No.
 17 QUESTIONS BY MS. SINGER:
 18 Q. I'm sorry. It's the bottom of
 19 page 536, the underscored language.
 20 MS. FUMERTON: Object to form.
 21 MR. EPPICH: Object to the
 22 form. Calls for a legal conclusion.
 23 Vague.
 24 THE WITNESS: Sorry, can you
 25 repeat it?

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1 changes but wants us to be aware that merely
 2 obtaining a signed document isn't going to be
 3 enough of a defense. Distributors will have
 4 to do more to identify the pharmacy's
 5 legitimacy."
 6 Do you understand what this is
 7 referring to?
 8 MS. MAINIGI: Objection.
 9 Foundation. Outside the scope of the
 10 Touhy authorization.
 11 THE WITNESS: I don't know what
 12 question they're talking about.
 13 QUESTIONS BY MS. SINGER:
 14 Q. Okay. Would the DEA agree that
 15 in addition to completing a question --
 16 having a potential customer complete a
 17 questionnaire before a registrant agrees to
 18 ship them a controlled substance, that a
 19 registrant has to verify that the answers to
 20 that questionnaire are accurate and complete?
 21 MR. EPPICH: Object to the
 22 form. Calls for a legal conclusion.
 23 THE WITNESS: Yes.
 24 QUESTIONS BY MS. SINGER:
 25 Q. And then turning to page 2 of

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1 QUESTIONS BY MS. SINGER:
 2 Q. Yeah.
 3 Do you agree with that first
 4 underlined sentence, "DEA seemed to think the
 5 thresholds focus principally on volumes, and
 6 they express the view that an exclusive or
 7 even principal focus on volumes is
 8 inadequate"?
 9 A. Yes.
 10 Q. Okay. They also want the
 11 initial screen of orders to focus on, "A,
 12 patterns of ordering, comparing the present
 13 order to the past orders from the same
 14 customers, including whether the frequency of
 15 orders is suspicious; 2, orders are from
 16 similar customers; and, 3, orders from the --
 17 from other establishments of the same type in
 18 the locale or region; and on, B, combinations
 19 of controlled substances ordered."
 20 Does DEA agree that that is
 21 also a necessary element of monitoring for
 22 suspicious orders?
 23 MR. EPPICH: Object to the
 24 form. Calls for a legal conclusion.
 25 THE WITNESS: Yeah, I'm not --

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1 the word "necessary," I mean, it's
 2 very important. It's part of the
 3 criteria that should be included.
 4 QUESTIONS BY MS. SINGER:
 5 Q. Okay. And then on Bates
 6 number 538, looking at the highlighted
 7 language toward the bottom of the page: "In
 8 general" --
 9 I want to make sure you see
 10 where I am.
 11 A. Yes.
 12 Q. -- "DEA did not object to our
 13 recommendation that the particular drug or
 14 drugs that cause an order to be an order of
 15 interest or a suspicious order should not be
 16 shipped but other drugs can be. Their point
 17 was that in some circumstances the connection
 18 between that drug and another drug in the
 19 order should lead the wholesaler not to ship
 20 the other drug as well. Again, in their
 21 view, looking at a volume order drug by drug
 22 is not enough, and basing thresholds solely
 23 on volume is not enough. Even an order for a
 24 drug that does not meet a volume threshold
 25 may be suspicious in light of other aspects

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1 form. Foundation. Calls for
 2 speculation.
 3 MS. MAINIGI: Objection.
 4 Foundation.
 5 MR. FINKELSTEIN: Calls for
 6 speculation.
 7 MS. SINGER: You know what?
 8 Withdrawn. Don't answer that.
 9 QUESTIONS BY MS. SINGER:
 10 Q. The next bullet, "They wanted
 11 reports on all suspicious orders even if the
 12 order was not shipped."
 13 Does the DEA agree that
 14 registrants should be reporting all
 15 suspicious orders, even orders that aren't
 16 shipped?
 17 MR. EPPICH: Object to the
 18 form. Calls for speculation. Calls
 19 for a legal conclusion.
 20 **THE WITNESS: Yes.**
 21 **QUESTIONS BY MS. SINGER:**
 22 **Q. "Timeliness is very important.**
 23 **DEA wants us to emphasize the need for rapid,**
 24 **timely reporting."**
 25 **Is that a point that DEA made**

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1 of the order."
 2 Does DEA agree with that
 3 statement?
 4 MR. EPPICH: Object to the
 5 form. Calls for a legal conclusion.
 6 THE WITNESS: Yes.
 7 QUESTIONS BY MS. SINGER:
 8 Q. Okay. And then the final
 9 section of this document, Bates number 539,
 10 if you look at the bullets on the bottom of
 11 the page, additional comments/points raised.
 12 Do you see where I am?
 13 A. Yes.
 14 Q. "DEA was emphatic that if there
 15 were questions about an order, the order
 16 should not be shipped."
 17 Do you agree with that
 18 statement?
 19 MR. EPPICH: Object to form.
 20 Calls for a legal conclusion.
 21 THE WITNESS: Yes.
 22 QUESTIONS BY MS. SINGER:
 23 Q. And why do you think the
 24 "should not" is underscored there?
 25 MR. EPPICH: Object to the

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1 **clear to registrants?**
 2 MR. MAHADY: Objection to form.
 3 Objection to foundation.
 4 MR. EPPICH: Calls for
 5 speculation.
 6 **THE WITNESS: It's also**
 7 **regulation upon discovery, so it's**
 8 **immediately upon discovery.**
 9 QUESTIONS BY MS. SINGER:
 10 **Q. So that's a yes?**
 11 **A. Yes.**
 12 MS. SINGER: Okay. All right.
 13 Let's take a break.
 14 VIDEOGRAPHER: We're going off
 15 record. The time is 10:30.
 16 (Off the record at 10:30 a.m.)
 17 VIDEOGRAPHER: We're going back
 18 on the record. Beginning of Media
 19 File 3. The time is 10:45.
 20 MR. FINKELSTEIN: Before we
 21 resume, I just have a request of the
 22 parties and of the special master as
 23 well.
 24 Since it appears that we are
 25 deferring argument over the scope of

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1 the Touhy authorization until sometime
 2 later, we would ask that we be copied
 3 on briefings regarding the scope of
 4 the Touhy authorization and that we be
 5 given an opportunity to respond.
 6 MS. MAINIGI: Fine with us.
 7 MR. FINKELSTEIN: And I ask
 8 that those be e-mailed directly to
 9 James Bennett.
 10 MR. BENNETT: That's fine.
 11 SPECIAL MASTER COHEN: So
 12 stipulated.
 13 MS. SINGER: All right. Are we
 14 ready?
 15 QUESTIONS BY MS. SINGER:
 16 Q. All right. Mr. Prevoznik, on
 17 the one hand, industry has complained that
 18 you didn't give -- you, the DEA, didn't give
 19 them enough guidance or the right kind of
 20 guidance on identifying suspicious orders,
 21 but then one of the lawyers in your first two
 22 days of deposition suggested that the
 23 Rannazzisi letters, those 2006, 2007 letters,
 24 were improper and should have gone through a
 25 rulemaking process.

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1 suspicious orders but also said that the
 2 Rannazzisi letters were improper because they
 3 didn't go through a rulemaking process, are
 4 you able to reconcile those positions?
 5 What should DEA have done?
 6 MR. EPPICH: Object to form.
 7 MS. MAINIGI: Objection.
 8 Outside the scope of the Touhy
 9 authorization. Improper hypothetical.
 10 MR. FINKELSTEIN: I'll join the
 11 scope objection.
 12 You can answer if you
 13 understand.
 14 THE WITNESS: I'm still not
 15 sure what you're asking.
 16 MS. SINGER: Okay. Skip it.
 17 QUESTIONS BY MS. SINGER:
 18 Q. Okay. Let me ask it
 19 differently.
 20 Did the Rannazzisi letters, the
 21 2006, 2007 letters, change the obligations of
 22 registrants?
 23 A. No.
 24 MR. EPPICH: Object to form.
 25 Calls for a legal conclusion.

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1 Do you remember what I'm
 2 referring to?
 3 MR. EPPICH: Object to form.
 4 MS. MAINIGI: Objection.
 5 THE WITNESS: Yes.
 6 QUESTIONS BY MS. SINGER:
 7 Q. Okay. Is DEA able to swear
 8 these positions, that you didn't give enough
 9 guidance, but you also should have given more
 10 guidance? I just said the same thing.
 11 MR. EPPICH: Objection.
 12 QUESTIONS BY MS. SINGER:
 13 Q. Is the DEA able to swear those
 14 positions, that the guidance you gave was
 15 improper but you should have given more
 16 guidance?
 17 MR. EPPICH: Object to form.
 18 Vague.
 19 MS. MAINIGI: Outside the scope
 20 also.
 21 THE WITNESS: I'm not sure what
 22 you're asking me.
 23 QUESTIONS BY MS. SINGER:
 24 Q. So when industry complains you
 25 didn't give them enough guidance on

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1 QUESTIONS BY MS. SINGER:
 2 Q. Did they reflect a new policy
 3 or interpretation by DEA?
 4 MR. EPPICH: Object to the
 5 form.
 6 THE WITNESS: No, we were just
 7 being more proactive to get the
 8 registrants to see this was what was
 9 going on. That's why we did the
 10 distributor initiatives, to show them
 11 with their own data, these are the
 12 anomalies that we were seeing and
 13 explaining to them this is what we
 14 saw, and you should be paying
 15 attention to these as well.
 16 So the guidance letter -- or
 17 not the guidance. The reiteration of
 18 what their legal obligations were,
 19 both statutorily and regulatory, were
 20 in those letters, and it was to stop
 21 what was going on at that time.
 22 QUESTIONS BY MS. SINGER:
 23 Q. And "stop" meaning the --
 24 A. The diversion of controlled
 25 substances into the illicit market.

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1 (Prevoznik Plaintiffs Exhibit
 2 P41 marked for identification.)
 3 QUESTIONS BY MS. SINGER:
 4 Q. Okay. Showing you Exhibit 41.
 5 Do you recognize this, Mr. Prevoznik, as one
 6 of Joe Rannazzisi's letters from
 7 September 27, 2006?
 8 A. Yes.
 9 Q. And turn to page 3 of that
 10 letter, please.
 11 Do you see a heading at the top
 12 of the page, Circumstances That Might Be
 13 Indicative of Diversion?
 14 A. Yes.
 15 Q. And does this letter then go
 16 through a list of ten factors that
 17 registrants might look to to determine
 18 whether an order is suspicious?
 19 MS. MAINIGI: Objection.
 20 THE WITNESS: Are you talking
 21 the middle 10 or the four above it?
 22 QUESTIONS BY MS. SINGER:
 23 Q. The 1 through 4 -- I'm sorry,
 24 and then 1 through 10, so a total of 14.
 25 A. Yes.

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1 THE WITNESS: Well, I mean,
 2 it's -- our job as DEA is as a
 3 regulatory and as a law enforcement,
 4 is to ensure that the right -- that
 5 it's staying within the closest in the
 6 distribution. So that's -- our job is
 7 to investigate, detect and pro -- and
 8 detect where this might be occurring.
 9 So, I mean, that's what our job is.
 10 QUESTIONS BY MS. SINGER:
 11 Q. Okay. So let me ask it
 12 slightly differently.
 13 In your experience, did these
 14 companies have lawyers and lobbyists to help
 15 them explain the rules for preventing
 16 diversion and reporting suspicious orders?
 17 MR. EPPICH: Objection. Form.
 18 Calls for speculation. Foundation.
 19 MS. MAINIGI: Outside the
 20 scope.
 21 THE WITNESS: Yes.
 22 QUESTIONS BY MS. SINGER:
 23 Q. And do you think, does DEA
 24 think, that the industry's failure to comply
 25 with the Controlled Substances Act was due to

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1 Q. Your math is better than mine.
 2 And does this, in fact, reflect
 3 information, clarification, that DEA provided
 4 to registrants to help them identify
 5 suspicious orders?
 6 A. Yes.
 7 Q. Okay.
 8 MR. EPPICH: Object to form.
 9 QUESTIONS BY MS. SINGER:
 10 Q. All right. Now, many of the
 11 registrants represented by counsel here are
 12 sophisticated, multi-billion dollar
 13 companies; is that correct?
 14 MR. EPPICH: Object to form.
 15 MS. MAINIGI: Object to form.
 16 Scope.
 17 MR. FINKELSTEIN: Hang on.
 18 I'll join the scope objection.
 19 You can answer.
 20 QUESTIONS BY MS. SINGER:
 21 Q. Does DEA believe that they
 22 needed DEA to explain the rules to them?
 23 MR. EPPICH: Object to form.
 24 Argumentative.
 25 MS. MAINIGI: Scope.

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1 a failure to understand what the law required
 2 of them?
 3 MR. MAHADY: Objection. Form.
 4 MS. MAINIGI: Foundation.
 5 Scope.
 6 MR. EPPICH: Objection. Calls
 7 for a legal conclusion.
 8 MR. FINKELSTEIN: Calls for
 9 speculation.
 10 THE WITNESS: No.
 11 QUESTIONS BY MS. SINGER:
 12 Q. And do you think that
 13 industry's failure to comply with the
 14 Controlled Substances Act and maintain -- and
 15 the failure to maintain effective controls
 16 was due to -- I'm sorry, let me say that
 17 again.
 18 Do you think that industry's
 19 failure to maintain effective controls to
 20 prevent diversion was based on a lack of
 21 recognition that diversion imperils public
 22 health and safety?
 23 MR. EPPICH: Objection to form.
 24 Foundation. Calls for a legal
 25 conclusion.

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1 MR. FINKELSTEIN: Calls for
 2 speculation.
 3 THE WITNESS: Can you please
 4 repeat it?
 5 QUESTIONS BY MS. SINGER:
 6 Q. Yeah. I'll put it differently.
 7 Do you think that the reason
 8 that the industry didn't comply with the
 9 rules is because they didn't understand what
 10 would happen if they permitted the diversion
 11 of controlled substances?
 12 MR. EPPICH: Objection to form.
 13 Calls for speculation.
 14 MS. MAINIGI: Outside the scope
 15 of the Touhy authorization.
 16 MR. FINKELSTEIN: Calls for
 17 speculation.
 18 THE WITNESS: Can you give it
 19 to me one more time? I'm just having
 20 a little hard time interpreting.
 21 QUESTIONS BY MS. SINGER:
 22 Q. Do you think that industry
 23 failed to understand that permitting the
 24 diversion of controlled substances
 25 jeopardizes public health and safety?

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1 closed system is to prevent diversion and
 2 protect public safety and the public
 3 interest?
 4 MR. EPPICH: Objection to form.
 5 MS. MAINIGI: Objection to
 6 form. Outside the scope of the Touhy
 7 authorization.
 8 Special Master Cohen, I do
 9 think that this entire line of
 10 questioning where somehow the DEA is
 11 supposed to define what industry was
 12 thinking in some broad sense is
 13 totally improper.
 14 MR. EPPICH: Objection. Calls
 15 for speculation.
 16 MR. FINKELSTEIN: Join the
 17 speculation objection.
 18 SPECIAL MASTER COHEN:
 19 Eventually there will be an
 20 admissibility ruling on this. I'm not
 21 going to preclude the questions from
 22 being asked at this juncture.
 23 QUESTIONS BY MS. SINGER:
 24 Q. Did you answer the question,
 25 that --

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1 MR. EPPICH: Objection to form.
 2 Calls for speculation. Scope.
 3 MR. FINKELSTEIN: Same
 4 objection.
 5 THE WITNESS: Yes, I would
 6 agree that they didn't.
 7 QUESTIONS BY MS. SINGER:
 8 Q. And put a different way,
 9 because I've got a lot of negatives in there,
 10 do you think industry understood that
 11 diversion leads to negative consequences for
 12 public health and safety?
 13 MR. EPPICH: Object to form.
 14 Calls for speculation. Legal
 15 conclusion. Scope.
 16 MS. MAINIGI: Foundation.
 17 MR. FINKELSTEIN: Calls for
 18 speculation.
 19 THE WITNESS: I think they
 20 obviously do now. I don't know at
 21 that time that they realized how bad
 22 it was getting.
 23 QUESTIONS BY MS. SINGER:
 24 Q. But they did understand that
 25 the purpose of the controlled -- of the

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1 A. I'm not sure if I answered or
 2 not.
 3 Q. Okay. Let me ask one more.
 4 Is the -- did the DEA, in the
 5 Controlled Substances Act, make clear to
 6 industry that the failure to prevent
 7 diversion was a threat to public safety and
 8 the public interest?
 9 MR. EPPICH: Objection to form.
 10 Foundation.
 11 THE WITNESS: Yes, I think it's
 12 established in 823 where it's part of
 13 our -- part of the registrant that is
 14 applying to be a registrant
 15 understands that they have to maintain
 16 effective controls. They have to
 17 follow the state laws. They have to
 18 not be convicted of, you know,
 19 felonies or anything like that.
 20 But also they also know that
 21 these drugs themselves are scheduled
 22 controlled substances for a particular
 23 reason, because they're addictive,
 24 psychologically and physically they're
 25 addictive, so they know that these

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1 drugs have these properties within
 2 themselves.
 3 So they would understand that
 4 these drugs are categorized or
 5 scheduled in that manner because they
 6 have the potential to hurt.
 7 MR. FINKELSTEIN: For what it's
 8 worth, the witness said 823, not E 23.
 9 QUESTIONS BY MS. SINGER:
 10 Q. Now, you were asked in the
 11 first two days of your deposition some
 12 questions about whether DEA implicitly or
 13 explicitly approved of distributors'
 14 compliance programs.
 15 Do you remember that line of
 16 questioning?
 17 A. Yes.
 18 Q. Okay. And you testified that
 19 if the DEA found problems, like not reporting
 20 suspicious orders, you would let the
 21 registrant know they needed to make
 22 adjustments; is that correct?
 23 A. Now, I don't understand that
 24 that's the totality of what I stated.
 25 Q. Okay. So --

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1 they ask -- or we hear something that
 2 doesn't sound quite right, we would
 3 offer and say, "Well, you might want
 4 to look at this."
 5 Sort of exactly like the
 6 Rannazzisi letters in which we laid
 7 out the foundation of these are the
 8 things that we're seeing. We're
 9 having trouble trying to figure out
 10 why this is going on. So we're asking
 11 you to ask the same questions of
 12 yourselves of the data that you're
 13 seeing.
 14 So what we're trying to do is
 15 we're trying to put people in
 16 compliance so that this stops, that
 17 the diversion stops. So, yes, we
 18 would -- we would offer suggestions to
 19 them.
 20 However, if we're into an
 21 investigation or something where it --
 22 where we are either investigating or
 23 litigating, that might -- that
 24 conversation might slow down.
 25

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1 MR. EPPICH: Well, let me
 2 object to it misstates prior
 3 testimony, please.
 4 QUESTIONS BY MS. SINGER:
 5 Q. Okay. So would the DEA let a
 6 registrant know if it was aware of problems
 7 with its suspicious order monitoring system?
 8 MS. MAINIGI: Objection.
 9 Vague. Form. Foundation.
 10 MR. FINKELSTEIN: Incomplete
 11 hypothetical.
 12 MS. MAINIGI: And time period.
 13 THE WITNESS: So how I would
 14 respond to this particular question is
 15 when we sit down with a registrant and
 16 they're explaining their system to us,
 17 we are in a listening mode. We are
 18 listening to what they say: "This is
 19 what we're going to do. This is how
 20 we're going to implement it. These
 21 are the thresholds. These are the" --
 22 whatever. They're explaining the
 23 system to us, so we listen to what
 24 they're saying.
 25 If we, in listening to that,

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1 QUESTIONS BY MS. SINGER:
 2 Q. Understood.
 3 And the fact that DEA doesn't
 4 alert a registrant to a problem with their
 5 suspicious order monitoring program doesn't
 6 mean the problem doesn't exist, does it?
 7 MR. EPPICH: Object to form.
 8 Calls for speculation. Calls for a
 9 legal conclusion.
 10 MS. FUMERTON: And lack of
 11 foundation.
 12 THE WITNESS: Yes.
 13 QUESTIONS BY MS. SINGER:
 14 Q. Yes. Okay.
 15 So, for instance, if I turn in
 16 my taxes and the IRS cashes the check and
 17 doesn't send me an audit letter, it doesn't
 18 mean that they've approved of a tax shelter
 19 that I may have?
 20 MR. EPPICH: Objection.
 21 Incomplete hypothetical form.
 22 QUESTIONS BY MS. SINGER:
 23 Q. Not that I do.
 24 MR. EPPICH: Objection. Form.
 25 Incomplete hypothetical.

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1 MS. FUMERTON: Outside the
 2 scope.
 3 MR. FINKELSTEIN: Scope.
 4 Unless you're talking about my taxes.
 5 THE WITNESS: Yes.
 6 QUESTIONS BY MS. SINGER:
 7 Q. Okay. So you testified, too,
 8 that things can look good on paper or look
 9 fine on paper, but what matters is how they
 10 work in practice, correct?
 11 MR. EPPICH: Objection to the
 12 extent it misstates prior testimony.
 13 THE WITNESS: Well, the
 14 regulations require two things:
 15 design and operate. So the design
 16 would be this is what we propose, this
 17 is what our system looks like, and
 18 then becomes, well, what, in fact, did
 19 you do with the operation of it.
 20 QUESTIONS BY MS. SINGER:
 21 Q. Okay. And you, the DEA, can't
 22 always see what distributors don't do or do
 23 wrong, especially if they're trying not to be
 24 caught, correct?
 25 MR. EPPICH: Object to the

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1 Q. And if you go down towards the
 2 bottom of the page, there's a paragraph that
 3 begins with "Gary Boggs, special agent with
 4 the DEA's Office of Diversion Control."
 5 Do you see where I am?
 6 A. Yes.
 7 Q. And do you know who Gary Boggs
 8 is?
 9 A. Yes.
 10 Q. And who is Gary Boggs?
 11 A. He was one of the assistants to
 12 Joe Rannazzisi when Joe was the head of the
 13 diversion program.
 14 Q. Okay. And this article, if you
 15 look at page 1, is dated 2012.
 16 Do you know if Gary Boggs was
 17 with DEA in 2012?
 18 Or it identifies him here as a
 19 special agent with DEA's Office of Diversion
 20 Control.
 21 A. Yeah, I'm just trying to think,
 22 because I got to headquarters in 2012, so he
 23 was there for part of it, but I think he may
 24 have -- not 100 percent, but he may have
 25 retired towards the end of the year.

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1 form. Foundation.
 2 MS. MAINIGI: Incomplete
 3 hypothetical and outside the scope.
 4 THE WITNESS: Correct.
 5 (Prevoznik Plaintiff's Exhibit
 6 P42 marked for identification.)
 7 QUESTIONS BY MS. SINGER:
 8 Q. Okay. I want to turn to
 9 Exhibit 42.
 10 It is Exhibit Number 7 to the
 11 Boggs deposition. It's called "American
 12 Pain: The Largest US Pill Mill's Rise and
 13 Fall."
 14 Have you seen this article
 15 before?
 16 A. I don't -- I don't know of this
 17 one in particular. I've seen a lot of
 18 articles.
 19 Q. Okay. And I want you to turn
 20 to the -- I don't know if it's tabbed on your
 21 copy, but page -- the page that starts
 22 "Harvard Drug" on the top. I think it's the
 23 fifth page.
 24 Do you see that page?
 25 A. Yes.

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1 Q. Okay. So it says here, "Gary
 2 Boggs, special agent with the DEA's Office of
 3 Diversion Control, says the cases that the
 4 DEA has brought in recent years involved
 5 wholesalers knowingly making enormous sales
 6 to customers that were per se in violation of
 7 DEA's rules."
 8 Do you see where I'm reading?
 9 A. Yes.
 10 Q. And does the DEA agree with
 11 that statement?
 12 MR. EPPICH: Object to the
 13 form. Foundation. Scope.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MS. SINGER:
 16 Q. And then it goes on quoting
 17 Mr. Boggs, "The notion put out by HDMA that
 18 somehow or another the DEA is not providing
 19 essential information to them is simply not
 20 accurate, says Boggs. It's a smokescreen.
 21 It's a step out of desperation."
 22 Do you see that statement?
 23 A. Yes.
 24 Q. Okay. Do you agree with that
 25 statement?

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1 MR. EPPICH: Objection to the
 2 form. Scope. Foundation.
 3 MR. FINKELSTEIN: Object to the
 4 form.
 5 THE WITNESS: Yes.
 6 (Prevoznik Plaintiff's Exhibit
 7 P43 marked for identification.)
 8 QUESTIONS BY MS. SINGER:
 9 Q. All right. Moving to the next
 10 exhibit.
 11 By the way, do you know what
 12 Gary Boggs does now?
 13 MR. EPPICH: Objection to form.
 14 Calls for speculation.
 15 THE WITNESS: He works for
 16 McKesson.
 17 QUESTIONS BY MS. SINGER:
 18 Q. All right. Exhibit 43,
 19 Mr. Prevoznik.
 20 This is MCKMDL00661483.
 21 MR. FINKELSTEIN: Can I get
 22 another copy of this, please?
 23 QUESTIONS BY MS. SINGER:
 24 Q. All right. And this is an
 25 e-mail Re: Report on House Energy and

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1 QUESTIONS BY MS. SINGER:
 2 Q. Do you know if that might be
 3 Cardinal Health?
 4 A. It could be.
 5 MR. EPPICH: Objection.
 6 Foundation.
 7 MS. MAINIGI: Outside the
 8 scope.
 9 MR. EPPICH: Asked and
 10 answered.
 11 MS. MAINIGI: Ms. Singer, we
 12 would appreciate it if you were not
 13 testifying.
 14 MS. SINGER: I don't think I
 15 was.
 16 QUESTIONS BY MS. SINGER:
 17 Q. -- "has blown them off to the
 18 point that the DEA is now hammering all of
 19 us."
 20 Does this accurately reflect
 21 the sense of the -- is it true that the DEA
 22 felt that the industry did not respond to
 23 their guidance and request for compliance?
 24 MR. MAHADY: Objection. Form.
 25 Objection. Foundation.

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1 Commerce Subcommittee Hearing on DEA and FDA
 2 Transparency.
 3 And I'll direct you to the
 4 middle of the e-mail from Ann Berkey.
 5 Do you see where I am?
 6 A. Yes.
 7 Q. Okay. And it's dated Tuesday,
 8 April 8, 2014.
 9 And if you look in the text of
 10 that e-mail, it says, "I met today with Gary
 11 Boggs, the new senior director of reg affairs
 12 for US pharma for the east of the Mississippi
 13 River, that is, who is based in Livonia.
 14 He's a former top official with the DEA, and
 15 we talked extensively about this bill, the
 16 hearing, ways we can work with the Agency, et
 17 cetera. He outlined in some detail the
 18 processes that the DEA has had in place for
 19 years to, quote, collaborate with wholesalers
 20 in the way in which our industry, CAH" --
 21 Do you know what CAH refers to?
 22 MR. EPPICH: Objection.
 23 Foundation. Calls for speculation.
 24 THE WITNESS: No, I don't.
 25

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1 MS. MAINIGI: Outside the
 2 scope.
 3 MR. EPPICH: Objection. Form.
 4 Calls for speculation. No foundation.
 5 MR. FINKELSTEIN: Vague as to
 6 time.
 7 THE WITNESS: Yes.
 8 QUESTIONS BY MS. SINGER:
 9 Q. And this is as of 2014,
 10 correct?
 11 MR. EPPICH: Objection.
 12 Foundation. Misstates the document.
 13 Form.
 14 THE WITNESS: Yes, that's the
 15 date on the e-mail.
 16 QUESTIONS BY MS. SINGER:
 17 Q. All right. Turn to the next
 18 page, please. It says, towards the top, "Per
 19 our discussion with Rep Burgess."
 20 Do you see where I am?
 21 A. Yes.
 22 Q. "Per our discussion with Rep
 23 Burgess on Saturday, his office called me
 24 this afternoon before the hearing and asked
 25 me for questions he could ask DEA." Stop

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1 there.
 2 Now, do you know who Ann Berkey
 3 is?
 4 MR. EPPICH: Objection. Calls
 5 for speculation.
 6 QUESTIONS BY MS. SINGER:
 7 Q. No?
 8 A. No.
 9 Q. Okay. Were you aware that the
 10 HDA was providing questions to members of
 11 Congress, or Representative Burgess in
 12 particular, to ask DEA at an upcoming
 13 hearing?
 14 MR. EPPICH: Objection.
 15 Foundation. Scope. Form.
 16 MR. FINKELSTEIN: I'll join the
 17 scope objection.
 18 THE WITNESS: Me personally,
 19 no, I did not know that.
 20 (Prevoznik Plaintiff's Exhibit
 21 P44 marked for identification.)
 22 QUESTIONS BY MS. SINGER:
 23 Q. Okay. Next exhibit.
 24 Okay. Exhibit 44. This is
 25 ABDCMDL00139028.

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1 A. Yes.
 2 MR. EPPICH: Objection.
 3 QUESTIONS BY MS. SINGER:
 4 Q. -- "the executive assistant to
 5 the deputy administrator for diversion
 6 control, led this response. He stated that
 7 DEA's single greatest concern was their
 8 belief that wholesaler distributors were lax
 9 in analysis, review and acting on their own
 10 ARCOS data. He stated that sometimes the
 11 data were pretty egregious. He went on to
 12 explain," turning the page, "that the Agency
 13 had not seen changes in registrants' behavior
 14 that it expected after presenting its
 15 analysis of ARCOS data to them, so we have --
 16 quote, 'so we have upped our game.'"
 17 Is this consistent with the
 18 DEA's view and your testimony that
 19 registrants were lax in their analysis,
 20 review and acting on their own ARCOS data?
 21 MR. EPPICH: Object to form.
 22 Misstates testimony. Foundation.
 23 THE WITNESS: Yes.
 24 QUESTIONS BY MS. SINGER:
 25 Q. And was it pretty egregious?

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1 It's called Summary of DEA HDMA
 2 meeting, December 19, 2011.
 3 Do you recall a meeting between
 4 the DEA and HDMA in 2011?
 5 MR. EPPICH: Objection.
 6 Foundation.
 7 THE WITNESS: I don't.
 8 QUESTIONS BY MS. SINGER:
 9 Q. The DEA did meet with the HDMA
 10 periodically, correct?
 11 MR. EPPICH: Objection.
 12 Foundation.
 13 THE WITNESS: Correct.
 14 QUESTIONS BY MS. SINGER:
 15 Q. Okay. And down at the bottom
 16 of the page here, in the last paragraph, it
 17 says, "HDMA asked if there was any -- if
 18 there were any noncompliance trends
 19 throughout the wholesale distribution
 20 industry we should inform our members about."
 21 Do you see where I am?
 22 A. Yes.
 23 Q. Okay. "Gary Boggs" --
 24 Who we talked about just a
 25 minute ago, correct?

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1 MR. EPPICH: Objection to form.
 2 Foundation.
 3 MS. MAINIGI: Vague.
 4 THE WITNESS: Yes.
 5 QUESTIONS BY MS. SINGER:
 6 Q. And when it says here that DEA
 7 had "upped its game," do you know what that's
 8 referring to?
 9 MR. EPPICH: Objection to form.
 10 Foundation.
 11 MS. MAINIGI: Outside scope.
 12 THE WITNESS: At this time
 13 period, we were investigating and
 14 litigating against the wholesalers.
 15 QUESTIONS BY MS. SINGER:
 16 Q. Okay. Prompted by DEA's sense
 17 that that's what they needed to do given a
 18 lack of voluntarily compliance, correct?
 19 MR. EPPICH: Object to the
 20 form. Misstates testimony.
 21 Foundation.
 22 THE WITNESS: Yes.
 23 (Prevoznik Plaintiff's Exhibit
 24 P45 marked for identification.)
 25

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1 QUESTIONS BY MS. SINGER:
 2 Q. Exhibit 45. This is
 3 CAH_MDL2804_01530082. And I'll represent
 4 that this is an HDMA document.
 5 And I'd like to direct you to
 6 page 2. I'm sorry, not page 2, page 1,
 7 number 2. Just throwing you for a loop.
 8 Do you see the row that
 9 indicates "Petition DEA for a regulation to
 10 clarify suspicious orders and/or suspicious
 11 order monitoring expectations"?
 12 Do you see where I am?
 13 A. Yes.
 14 Q. Okay. And it says in the far
 15 right column, "Favored this option above all
 16 the others. Unlikely that DEA would create
 17 such a regulation; therefore, low risk of
 18 resulting in something overly restrictive or
 19 difficult to follow. A good ask. The optics
 20 would be positive. We go on the record as
 21 asking for clarity. Recognize that this may
 22 be -- this may tie into what is done on the
 23 Hill or in a PR campaign, as external
 24 pressure may be desirable and/or a legislator
 25 may use it as the basis of a new bill. Some

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1 document, and it's outside the scope
 2 of the Touhy authorization.
 3 THE WITNESS: Can you repeat
 4 that, please?
 5 QUESTIONS BY MS. SINGER:
 6 Q. Or that they recognized that it
 7 was unlikely that DEA would create such a
 8 regulation, so it was a low risk for
 9 industry?
 10 MS. MAINIGI: Same objections.
 11 THE WITNESS: Correct.
 12 QUESTIONS BY MS. SINGER:
 13 Q. When you were testifying -- and
 14 you can put that away, Mr. Prevoznik.
 15 When you were testifying
 16 earlier in your deposition --
 17 MR. BENNETT: If I might
 18 interrupt for one second, I believe
 19 there was -- in the record you asked
 20 the question, and I think the witness
 21 said "correct," and it was transcribed
 22 as "no." But I just want the record
 23 to be clear what your answer was to
 24 her last question.
 25 THE WITNESS: I believe it was

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1 went so far as to state we should do this.
 2 Urged HDMA to carefully articulate, one, what
 3 we believe DEA should address; and two, DEA
 4 should only inspect/enforce against what is
 5 specified in the regulations."
 6 Have I just read that
 7 accurately, Mr. Prevoznik?
 8 A. Yes.
 9 Q. And was DEA aware that the
 10 reason HDMA was pressing for clarification of
 11 suspicious order and suspicious order
 12 monitoring expectations was for the optics of
 13 it?
 14 MR. EPPICH: Object to form.
 15 Foundation. Calls for speculation.
 16 MS. MAINIGI: And outside
 17 scope.
 18 THE WITNESS: No.
 19 QUESTIONS BY MS. SINGER:
 20 Q. Or that they recognized that it
 21 was unlikely that DEA would actually create
 22 such a regulation?
 23 MR. EPPICH: Object to form.
 24 Foundation. Scope.
 25 MS. MAINIGI: Misstates the

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1 "correct."
 2 MS. SINGER: Thank you.
 3 QUESTIONS BY MS. SINGER:
 4 Q. All right. In your testimony
 5 on day one or day two, you were asked whether
 6 suspicious orders always lead to diversion.
 7 Do you remember?
 8 A. Yes.
 9 MS. MAINIGI: Objection to
 10 form. Vague.
 11 QUESTIONS BY MS. SINGER:
 12 Q. Okay. And I think your answer
 13 to that was, no, it doesn't always lead to
 14 diversion.
 15 Does that seem right to you?
 16 MR. EPPICH: Objection. The
 17 transcript speaks for itself.
 18 THE WITNESS: Yes.
 19 QUESTIONS BY MS. SINGER:
 20 Q. Okay. And is that because,
 21 Mr. Prevoznik, not all suspicious orders turn
 22 out to actually be suspicious?
 23 A. Correct.
 24 MR. EPPICH: Objection to form.
 25

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1 QUESTIONS BY MS. SINGER:
 2 Q. Okay. But if a distributor
 3 doesn't investigate a suspicious order, it
 4 wouldn't know whether that order was being
 5 diverted, right?
 6 MR. EPPICH: Object to the
 7 form. Calls for speculation.
 8 THE WITNESS: Yes.
 9 QUESTIONS BY MS. SINGER:
 10 Q. And to use the language we
 11 quoted earlier from the Diversion
 12 Investigators Manual, sending out potentially
 13 suspicious orders without investigating them
 14 reflects a, quote, attitude of
 15 irresponsibility.
 16 Does DEA agree?
 17 MS. MAINIGI: Objection to
 18 form. Outside the scope. Vague.
 19 THE WITNESS: Yes.
 20 (Prevoznik Plaintiff's Exhibit
 21 P46 marked for identification.)
 22 QUESTIONS BY MS. SINGER:
 23 Q. Let's turn to the Energy and
 24 Commerce. Since we don't have previous --
 25 the exhibits from last time, we're going to

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1 says in that last paragraph, "As the opioid
 2 epidemic began to surge, the DEA, by 2005,
 3 realized that traditional policing of
 4 individual doctors and pharmacies was no
 5 longer an effective approach against the
 6 oncoming avalanche of opioids from rogue
 7 Internet pharmacies and pill mills. Instead,
 8 DEA's focus turned to the drug wholesale
 9 distributors, a choke point in the
 10 pharmaceutical supply chain, who transfer
 11 drugs from manufacturers to businesses such
 12 as clinics, hospitals and pharmacies where
 13 they can be dispensed to patients.
 14 Distributors in previous years had not
 15 received enforcement attention from the DEA.
 16 The new focus looked for greater impact for
 17 the highly consolidated industry given the
 18 three -- given that the three major drug
 19 distributors - AmerisourceBergen, Cardinal
 20 Health and McKesson - control about
 21 85 percent of the drug supply."
 22 Do you agree with the statement
 23 I've just read?
 24 A. Yes.
 25 MS. MAINIGI: Objection.

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1 remark the Energy and Commerce report as
 2 Exhibit 46. It's the same report that went
 3 in earlier in your testimony.
 4 And industry lawyers asked
 5 you -- they showed you a piece of the report
 6 that said that DEA could have acted earlier.
 7 Do you remember those
 8 questions?
 9 A. Vaguely, but, yes.
 10 Q. Okay. And certainly this
 11 Energy and Commerce report finds the DEA
 12 could have done more than it did, correct?
 13 A. Correct.
 14 Q. Okay. But it's also highly
 15 critical of distributors, is it not?
 16 MR. EPPICH: Objection.
 17 MS. MAINIGI: Objection.
 18 Foundation. Outside the scope.
 19 MR. FINKELSTEIN: Join the
 20 scope objection.
 21 THE WITNESS: Yes.
 22 QUESTIONS BY MS. SINGER:
 23 Q. Okay. And just for context, I
 24 want to direct you to page 5 of the report.
 25 On the bottom of the page, it

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1 QUESTIONS BY MS. SINGER:
 2 Q. And then "Beginning in 2005,
 3 the DEA undertook a series of initiatives
 4 meant to educate wholesale drug distributors
 5 about their legal obligations to prevent
 6 controlled substance diversion. The DEA's
 7 distributor initiative included one-on-one
 8 meetings with wholesale distributors in which
 9 DEA officials provided specific examples
 10 regarding distributors' own customers whose
 11 ordering habits were suggestive of trends
 12 indicating the presence of diversion and
 13 illicit Internet pharmacies. Of the five
 14 distributors investigated by the committee,
 15 AmerisourceBergen, Cardinal, HD Smith and
 16 McKesson, each had one-on-one meetings with
 17 DEA as part of this initiative. In addition,
 18 during 2006 and 2007, the DEA sent a series
 19 of three letters, sent to all DEA-registered
 20 distributors outlining their legal
 21 obligations to conduct due diligence and
 22 report suspicious orders."
 23 Is that also an accurate
 24 statement of what happened?
 25 MR. EPPICH: Object to form.

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1 Foundation. Calls for speculation.
 2 THE WITNESS: Yes.
 3 QUESTIONS BY MS. SINGER:
 4 Q. "Apparently the DEA soon
 5 realized that the largest distributors were
 6 not taking their compliance requirements with
 7 sufficient seriousness. In 2007 and 2008,
 8 the DEA took enforcement action through legal
 9 settlements against the three largest
 10 wholesale distributors in the US for alleged
 11 violations of the CSA, with multi-million
 12 dollar fines involving two of them."
 13 Is that also accurate?
 14 MR. EPPICH: Object to form.
 15 MS. MAINIGI: Objection to
 16 form.
 17 **THE WITNESS: Yes.**
 18 **QUESTIONS BY MS. SINGER:**
 19 **Q. Last paragraph. "Despite these**
 20 **settlement agreements and the subsequent**
 21 **policy enhancements that the three**
 22 **distributors made in their aftermath, the**
 23 **committee found that the distributors**
 24 **continued to ship large volumes of opioids**
 25 **into West Virginia. The three largest**

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1 **suffered a series of breakdowns or had a lack**
 2 **of follow-through in their -- through in**
 3 **their due diligence evaluations of**
 4 **prospective pharmacy customers. As**
 5 **demonstrated in the report, the committee**
 6 **found instances of insufficient due diligence**
 7 **by distributors who merely required**
 8 **pharmacies to complete new customer**
 9 **applications."**
 10 **Now, we talked about that**
 11 **earlier, correct?**
 12 MR. EPPICH: Object to the
 13 form.
 14 THE WITNESS: Correct.
 15 QUESTIONS BY MS. SINGER:
 16 Q. And that is not sufficient to
 17 comply with the registrant's obligation to
 18 know their customers, correct?
 19 MR. EPPICH: Object to the
 20 form. Foundation.
 21 MS. MAINIGI: Calls for a legal
 22 conclusion.
 23 THE WITNESS: Correct.
 24 QUESTIONS BY MS. SINGER:
 25 Q. "There were cases where data

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1 **wholesale drug distributors in the United**
 2 **States - AmerisourceBergen, Cardinal Health**
 3 **and McKesson - sent more than 900 million**
 4 **doses of hydrocodone and oxycodone to West**
 5 **Virginia between 2005 and 2016. Cardinal**
 6 **Health was the largest supplier of controlled**
 7 **substances to West Virginia out of the five**
 8 **companies examined as part of the Committee's**
 9 **investigation, and distributed more than 366**
 10 **million doses of hydrocodone and oxycodone to**
 11 **West Virginia pharmacies between 2005 and**
 12 **2016. From April 2006 through 2016, McKesson**
 13 **supplied 299.87 million doses of hydrocodone**
 14 **and oxycodone to West Virginia pharmacies,**
 15 **AmerisourceBergen distributed 248.16 million**
 16 **doses of hydrocodone and oxycodone to West**
 17 **Virginia pharmacies between 2005 and 2016."**
 18 **Is that also consistent with**
 19 **DEA's understanding of what had occurred?**
 20 MR. EPPICH: Object to the
 21 form. Foundation.
 22 **THE WITNESS: Yes.**
 23 **QUESTIONS BY MS. SINGER:**
 24 **Q. Turn the page, please. "Among**
 25 **the Committee's findings, distributors**

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1 submitted by a new customer was not
 2 critically analyzed to identify any red flags
 3 of controlled substance diversion, for
 4 example, potential red flags regarding a
 5 pharmacy's prescribing physicians that raised
 6 concerns about possible diversion were not
 7 questioned."
 8 Is that consistent with DEA's
 9 understanding of what occurred?
 10 MR. EPPICH: Object to form.
 11 Foundation.
 12 THE WITNESS: Yes.
 13 QUESTIONS BY MS. SINGER:
 14 Q. Goes on to say, "The
 15 investigation found instances where there
 16 were failures to monitor the volume of
 17 controlled substances sold to customers.
 18 Some distributors used thresholds to track
 19 customers' purchases of controlled substances
 20 and flag orders as suspicious when purchases
 21 exceeded those limits. But some of these
 22 thresholds were assigned arbitrarily and not
 23 effective. Committee found instances in
 24 which distributors set thresholds but failed
 25 to enforce them, assigned artificially high

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1 hydrocodone threshold limits with little to
 2 no documented justification, or continued to
 3 raise threshold levels without thoroughly
 4 investigating or documenting the
 5 justifications presented by a customer
 6 pharmacy."
 7 Again, is that what DEA
 8 observed happened during this time period?
 9 MR. EPPICH: Object to the
 10 form. Foundation. Calls for
 11 speculation.
 12 MS. MAINIGI: Join.
 13 THE WITNESS: Yes.
 14 QUESTIONS BY MS. SINGER:
 15 Q. Okay. And is that failure to
 16 flag suspicious orders, to approve them
 17 without justification and to continue to
 18 raise thresholds, a violation of the
 19 Controlled Substances Act?
 20 MS. MAINIGI: Objection. Calls
 21 for a legal conclusion. Outside the
 22 scope.
 23 MR. EPPICH: Objection to the
 24 form.
 25 MR. FINKELSTEIN: Object to

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1 distributor's employees relied on subjective
 2 criteria to investigate [sic] orders it
 3 considered suspicious."
 4 Does that also reflect what the
 5 DEA knew to happen during this time period?
 6 MS. MAINIGI: Objection. Form.
 7 Foundation. Outside scope.
 8 MR. FINKELSTEIN: Object to the
 9 form.
 10 THE WITNESS: Yes.
 11 QUESTIONS BY MS. SINGER:
 12 Q. And the last paragraph.
 13 "Another critical failure identified by the
 14 Committee involved instances in which
 15 distributors appeared to turn a blind eye to
 16 red flags of possible drug diversion.
 17 Despite available information, distributors
 18 at times took only minimal steps to
 19 investigate possible warning signs of
 20 diversion and continued to ship controlled
 21 substances to suspect pharmacies. In several
 22 cases, distributors either failed to fully
 23 investigate potentially troubling information
 24 they obtained from customer pharmacies or
 25 willfully ignored it. These failures raise

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1 form.
 2 THE WITNESS: Yes.
 3 QUESTIONS BY MS. SINGER:
 4 Q. It goes on, "Despite efforts by
 5 DEA to educate distributors about their
 6 responsibility to report suspicious orders,
 7 the companies reviewed by the committee
 8 failed to address suspicious orders" -- I'm
 9 sorry -- "suspicious order monitoring in
 10 critical ways. Rather than reporting
 11 individual suspicious orders as they were
 12 identified, some distributors reported a
 13 variety of other types of information to DEA
 14 over the years. This information included
 15 excessive orders encompassing drug shipments
 16 that had already been shipped and suspicious
 17 customers such as pharmacies with which
 18 distributors had terminated business
 19 relationships. Neither of these types of
 20 reports informed DEA about suspicious orders
 21 in realtime, nor did they guarantee the
 22 suspicious orders reported to DEA were also
 23 blocked by the distributors. The committee
 24 also found that one distributor lacked any
 25 formal order monitoring program. Rather, the

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1 substantial concern given that DEA has said
 2 existing knowledge of a geographic area's
 3 problem with controlled substance abuse is a
 4 factor that distributors should take into
 5 account when evaluating customers."
 6 Now, is that true, that DEA had
 7 said knowledge of a geographic area's problem
 8 with controlled substance abuse is a factor
 9 that should be taken into account by
 10 registrants?
 11 MR. EPPICH: Object to the
 12 form.
 13 MS. MAINIGI: Object to form.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MS. SINGER:
 16 Q. Okay. "West Virginia has the
 17 highest drug overdose rate in the country,
 18 meaning distributors should have been
 19 particularly attuned to any red flags
 20 encountered when conducting due diligence on
 21 pharmacies in that state."
 22 Is that also an accurate
 23 reflection of a registrant's duty when
 24 shipping controlled substances into West
 25 Virginia or other hotspots?

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1 MR. EPPICH: Object to form.
 2 Calls for a legal conclusion.
 3 MS. MAINIGI: Outside the
 4 scope.
 5 THE WITNESS: Yes.
 6 QUESTIONS BY MS. SINGER:
 7 Q. Okay. And this whole paragraph
 8 that I just read, does that also reflect the
 9 DEA's understanding of what happened during
 10 this time period?
 11 MR. EPPICH: Object to the
 12 form. Vague. Calls for a legal
 13 conclusion.
 14 MR. FINKELSTEIN: Join in the
 15 form objection.
 16 THE WITNESS: Yes.
 17 QUESTIONS BY MS. SINGER:
 18 Q. Okay. Turn to page 10, please.
 19 Bottom of page 10 there's a bullet that says,
 20 "For due process reasons, it is current DEA
 21 practice not to inform distributors or other
 22 registrants about customers that may have
 23 engaged in improper behavior."
 24 Do you see where I am?
 25 A. The bottom?

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1 form. Foundation. Calls for
 2 speculation.
 3 MS. MAINIGI: Outside scope.
 4 MR. EPPICH: May be outside the
 5 Touhy authorization as well.
 6 MS. MAINIGI: That's what I
 7 meant.
 8 THE WITNESS: I mean, I don't
 9 have the data in front of me to
 10 confirm those numbers.
 11 QUESTIONS BY MS. SINGER:
 12 Q. Okay. What about the next
 13 bullet: "McKesson did not submit suspicious
 14 order reports to the DEA regarding orders
 15 placed by West Virginia pharmacies until
 16 August 1, 2013."
 17 Do you know whether that's
 18 accurate?
 19 MR. EPPICH: Object to form.
 20 Foundation. Calls for speculation.
 21 Outside the Touhy authorization.
 22 MR. FINKELSTEIN: This is
 23 outside the Touhy authorization to the
 24 extent that it calls for information
 25 about West Virginia specifically.

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1 Q. Yes.
 2 A. Yes.
 3 Q. And does that accurately
 4 reflect DEA's policy?
 5 MR. EPPICH: Objection to form.
 6 MR. FINKELSTEIN: Hang on. We
 7 had a different witness to testify
 8 about this. You declined to ask her
 9 questions. I'm going to instruct him
 10 not to answer now.
 11 MS. SINGER: Okay.
 12 QUESTIONS BY MS. SINGER:
 13 Q. So turning to page 16.
 14 And I want to be respectful of
 15 the scope of your authorization and not ask
 16 you about individual investigations or
 17 current matters. But to the extent you can
 18 testify consistent with your authorization, I
 19 want to point you to the third bullet:
 20 "McKesson supplied just under 300 million
 21 doses of hydrocodone and oxycodone to West
 22 Virginia pharmacies between April 2006 and
 23 2016."
 24 Is that accurate?
 25 MR. EPPICH: Object to the

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1 MS. MAINIGI: The entire report
 2 calls for information that relates to
 3 West Virginia.
 4 MR. FINKELSTEIN: And our
 5 authorization to the plaintiffs was --
 6 concluded investigations and
 7 settlements with the defendants, but
 8 we specifically didn't authorize
 9 region-specific investigations.
 10 MS. SINGER: Okay. We will
 11 skip this then.
 12 QUESTIONS BY MS. SINGER:
 13 Q. Okay. Let's turn to page 319.
 14 You with me? You at page 319?
 15 A. Uh-huh.
 16 Q. Okay. Turning towards the
 17 middle of the page, just below it, the second
 18 paragraph from the bottom. "But as
 19 demonstrated by the Committee's
 20 investigation, the DEA did not always receive
 21 the level of compliance required under the
 22 CSA. The five distributors whose actions in
 23 West Virginia were examined by the Committee
 24 each had unique failures. The companies had
 25 various policies and procedures in place to

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1 prevent diversion but in some cases did not
 2 adequately follow or carry out those
 3 policies. As evidenced in the case studies
 4 discussed in each section, distributors had
 5 failings on multiple fronts."
 6 Is that consistent with the
 7 DEA's conclusions?
 8 MR. EPPICH: Object to the
 9 form. Foundation. Calls for
 10 speculation. Outside the Touhy
 11 authorization.
 12 THE WITNESS: Yes.
 13 QUESTIONS BY MS. SINGER:
 14 Q. "For instance, it is not
 15 sufficient due diligence for a distributor to
 16 only require prospective or existing
 17 customers to complete pharmacy questionnaires
 18 or supply supplemental data. The information
 19 disclosed on such questionnaires or the data
 20 submitted must also be critically analyzed to
 21 identify any red flags of controlled
 22 substance diversion."
 23 Does that accurately reflect a
 24 distributor's obligations or a registrant's
 25 obligations?

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1 MS. MAINIGI: Vague as to time.
 2 THE WITNESS: Yes.
 3 QUESTIONS BY MS. SINGER:
 4 Q. All right. We can leave this
 5 report.
 6 Okay. In questioning during
 7 the first two days of your deposition,
 8 Mr. Prevoznik, do you remember discussing the
 9 fact that a small percentage of doctors are
 10 engaged in unlawful prescribing?
 11 I think it was .5 percent.
 12 Do you remember that
 13 conversation?
 14 A. Yes.
 15 (Prevoznik Plaintiff's Exhibit
 16 P47 marked for identification.)
 17 QUESTIONS BY MS. SINGER:
 18 Q. Okay. So I want to turn to
 19 Exhibit 47, please.
 20 And that is Bates number
 21 PPLP0300001799742.
 22 If you turn to the first slide,
 23 it's titled "DEA/OD 11th Pharmaceutical
 24 Industry Conference."
 25 Do you recognize this

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1 MR. EPPICH: Object to the
 2 form.
 3 THE WITNESS: Yes.
 4 QUESTIONS BY MS. SINGER:
 5 Q. "Once distributors bring
 6 pharmacies on board, they need to monitor the
 7 volume of controlled substances sold to
 8 customers."
 9 Does that also accurately
 10 reflect a registrant's duties?
 11 MR. EPPICH: Object to form.
 12 Calls for a legal conclusion.
 13 THE WITNESS: Yes.
 14 QUESTIONS BY MS. SINGER:
 15 Q. And the last sentence,
 16 "Subsequently, when distributors set
 17 thresholds for customers, they should be
 18 enforced. In such cases where thresholds are
 19 adjusted, distributors should be able to
 20 document the justification for these
 21 changes."
 22 Does that also accurately
 23 reflect a registrant's obligations?
 24 MR. EPPICH: Object to the
 25 form. Calls for a legal conclusion.

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1 presentation?
 2 A. Do we know what year?
 3 Q. And what is it?
 4 A. No, I said, "Do we know what
 5 year?"
 6 Q. Oh. So it's Tuesday,
 7 September 16th. And if you look at the
 8 calendar in the years that are referenced, we
 9 believe it to be 2003 because of when
 10 Tuesday -- when September 16th is a Tuesday.
 11 MR. EPPICH: Objection.
 12 THE WITNESS: I've never seen
 13 this before.
 14 QUESTIONS BY MS. SINGER:
 15 Q. Okay. It does have on the
 16 front page DOJ, DEA logos, correct?
 17 A. Yes.
 18 Q. Okay. And does it look -- from
 19 your knowledge, is this a presentation by the
 20 DEA?
 21 MR. EPPICH: Objection.
 22 Foundation. Form.
 23 THE WITNESS: Yes.
 24 QUESTIONS BY MS. SINGER:
 25 Q. Okay. And if you turn to the

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1 fifth page, with the slide "retail
 2 diversion," 90 percent at doctor, pharmacy,
 3 hospital levels.
 4 Do you see that slide?
 5 A. Yes.
 6 Q. Okay. And if you look at the
 7 notes that are at the bottom of that slide,
 8 do you see the bottom section that starts,
 9 "Estimated 1.5 percent of doctors are
 10 negligent and/or dishonest?"
 11 Do you see where I'm reading?
 12 A. Yes.
 13 Q. Okay. It says, "That portion
 14 of DEA-registered physicians is many
 15 thousands. Their CS, or controlled
 16 substance, prescribing would total hundreds
 17 of thousands of scripts/millions of dosage
 18 units into illicit market."
 19 Is that accurate?
 20 MR. EPPICH: Objection.
 21 Foundation. Form. Misstates the
 22 document. Calls for speculation.
 23 MR. FINKELSTEIN: Object to the
 24 scope.
 25 THE WITNESS: Yes.

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1 QUESTIONS BY MS. SINGER:
 2 Q. Or an important tool for the
 3 DEA?
 4 MR. EPPICH: Object to form and
 5 foundation.
 6 THE WITNESS: Yes.
 7 QUESTIONS BY MS. SINGER:
 8 Q. Okay. And in fact, that's part
 9 of the foundation of the Controlled
 10 Substances Act, that each participant in the
 11 supply chain has to police its own
 12 participation in that supply chain, correct?
 13 MR. EPPICH: Object to form.
 14 Calls for a legal conclusion.
 15 Misstates.
 16 THE WITNESS: Yes.
 17 QUESTIONS BY MS. SINGER:
 18 Q. All right. And during the
 19 questioning by some of the industry counsel
 20 during the first two days of depositions, do
 21 you remember the suggestion that prescribers
 22 were better situated to identify improper
 23 prescriptions?
 24 Do you remember that testimony?
 25 MR. EPPICH: Objection to form

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1 QUESTIONS BY MS. SINGER:
 2 Q. And is it true, as it says
 3 here, that it is impossible for DEA to
 4 investigate and discipline that number of
 5 professionals?
 6 MR. EPPICH: Object to form.
 7 Foundation.
 8 MS. MAINIGI: Scope.
 9 THE WITNESS: I mean, we do the
 10 best we can.
 11 QUESTIONS BY MS. SINGER:
 12 Q. But that's a lot of --
 13 A. It's a lot.
 14 MR. EPPICH: Object to the
 15 form.
 16 QUESTIONS BY MS. SINGER:
 17 Q. And the last line here, "Far
 18 more effective, address the risk at the apex
 19 of the distribution center [sic]."
 20 Is that accurate, that that is
 21 a more effective way of enforcing compliance
 22 with the Controlled Substances Act?
 23 MR. EPPICH: Object to form.
 24 Foundation.
 25

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1 to the extent it misstates prior
 2 testimony.
 3 THE WITNESS: Not really.
 4 (Prevoznik Plaintiff's Exhibit
 5 P48 marked for identification.)
 6 QUESTIONS BY MS. SINGER:
 7 Q. Okay. Is it -- let's just turn
 8 to the document.
 9 All right. I'm showing you
 10 Exhibit 48. And the level -- and I'm sorry,
 11 this is CAH_MDL2804_00889528.
 12 Do you recognize the logo on
 13 the front of this presentation?
 14 A. Yes.
 15 Q. And what is it?
 16 A. It's our Chief Counsel's logo.
 17 Q. Okay. And if you turn to the
 18 inside first page, How to Keep Or Lose Your
 19 DEA Registration, do you recognize this
 20 presentation?
 21 A. Yes.
 22 Q. And what do you recognize it to
 23 be?
 24 A. It was one of the -- it was --
 25 it was given at a conference that we held.

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1 Q. A conference --
 2 A. For the industry.
 3 Q. Okay. A conference that DEA
 4 had for industry?
 5 A. Yes.
 6 Q. And do you know who gave this
 7 presentation?
 8 Do you know if would have been
 9 Linden Barber?
 10 MR. EPPICH: Objection. Form.
 11 Calls for speculation.
 12 THE WITNESS: I believe it was
 13 Linden that gave this.
 14 QUESTIONS BY MS. SINGER:
 15 Q. Okay. And Linden Barber was
 16 with the Chief Counsel's Office of DEA,
 17 correct?
 18 A. Yes.
 19 Q. Okay. And if you turn to
 20 page 4 of the presentation, titled "Effective
 21 Controls Against Diversion," the first point
 22 there is what, the first bullet point?
 23 A. "Good recordkeeping is
 24 essential."
 25 Q. Do you agree with that

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1 registrant's responsibility to act on
 2 information that points to diversion,
 3 correct?
 4 MR. EPPICH: Object to form.
 5 Calls for a legal conclusion.
 6 THE WITNESS: Correct.
 7 QUESTIONS BY MS. SINGER:
 8 Q. And it's not that the
 9 registrant is being asked to judge a
 10 prescription or a patient, but to look at red
 11 flags like the volume or dose or appearance
 12 of a practice, et cetera, correct?
 13 MR. EPPICH: Object to the
 14 form. Calls for a legal conclusion.
 15 Vague.
 16 THE WITNESS: Yes, they should
 17 look into totality of everything
 18 that's presented to them.
 19 QUESTIONS BY MS. SINGER:
 20 Q. Okay. And the last excuse on
 21 this slide, "I'm not responsible for what my
 22 customer does with the drugs."
 23 Is that an excuse that the DEA
 24 accepts from a registrant?
 25 MR. EPPICH: Object to form.

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1 statement?
 2 A. Yes.
 3 Q. In DEA's experience, is the
 4 absence of documentation a fairly good
 5 indication that something didn't happen in a
 6 registrant's compliance program?
 7 MR. EPPICH: Object to the
 8 form. Calls for a legal conclusion.
 9 THE WITNESS: Yes.
 10 QUESTIONS BY MS. SINGER:
 11 Q. Okay. Turning to page 9, this
 12 is what doesn't work, or how to lose your DEA
 13 registration.
 14 The second bullet point, what
 15 does that say?
 16 A. "It is not my job to
 17 second-guess the doctor."
 18 Q. Okay. And that's not an excuse
 19 that the DEA will accept from a registrant,
 20 correct?
 21 MR. EPPICH: Objection to form.
 22 Vague.
 23 THE WITNESS: Yes.
 24 QUESTIONS BY MS. SINGER:
 25 Q. And that's because it's a

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1 Vague.
 2 THE WITNESS: No.
 3 QUESTIONS BY MS. SINGER:
 4 Q. And that's because a registrant
 5 is responsible to make sure that they are not
 6 supplying to potential diversion, correct?
 7 MR. EPPICH: Object to the
 8 form. Calls for a legal conclusion.
 9 Vague.
 10 THE WITNESS: Correct.
 11 QUESTIONS BY MS. SINGER:
 12 Q. And do you know what Linden
 13 Barber does now, by the way?
 14 MS. MAINIGI: Objection.
 15 Outside the scope.
 16 THE WITNESS: I believe -- I
 17 believe he's still with Cardinal.
 18 QUESTIONS BY MS. SINGER:
 19 Q. Now, you were asked by --
 20 MR. FINKELSTEIN: Let's take
 21 our last break before lunch.
 22 MS. SINGER: Okay.
 23 VIDEOGRAPHER: We're going off
 24 record. The time is 11:36.
 25 (Off the record at 11:36 a.m.)

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1 VIDEOGRAPHER: We're going back
 2 on the record. Beginning of Media
 3 File 4. The time is 11:48.
 4 QUESTIONS BY MS. SINGER:
 5 Q. So, Mr. Prevoznik, just turning
 6 back for a minute to the Linden Barber
 7 presentation we were talking about before the
 8 break, which is Bates number 889528, I want
 9 to ask you to turn to page 13, please.
 10 And it's a slide titled "How to
 11 Keep Your DEA Registration."
 12 Do you see that?
 13 A. Yes.
 14 Q. Okay. And it says in the --
 15 under the first master bullet, "Master the
 16 obvious: Recordkeeping, reporting," and the
 17 last item, "Does it quack like a diverting
 18 duck."
 19 Is what Mr. Barber is saying
 20 here, what the DEA is saying, is if it looks
 21 like a suspicious order, it's a suspicious
 22 order?
 23 A. Yes.
 24 Q. And that if it has the signs,
 25 quacks like a duck, walks like a duck,

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1 P49 marked for identification.)
 2 QUESTIONS BY MS. SINGER:
 3 Q. Okay. And then I want to turn
 4 you to what we'll mark as Bates -- as
 5 Exhibit 49.
 6 And this is
 7 Anda_Opioids_MDL_0000476052. It's "What You
 8 Know and Who You Know," a presentation by
 9 Linden Barber.
 10 Do you see where I'm reading
 11 from?
 12 A. Yes.
 13 Q. And it's dated April 19, 2012,
 14 correct?
 15 A. Yes.
 16 Q. Okay. And at this point Linden
 17 Barber is no longer with the DEA, correct?
 18 A. Correct.
 19 Q. Okay. And it seems that he's
 20 with Cegedim.
 21 We heard that name before,
 22 correct?
 23 MS. MAINIGI: Objection.
 24 Foundation. Outside the scope of the
 25 Touhy authorization.

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1 whatever that expression is, that it's a
 2 duck; it's a suspicious order, correct?
 3 MS. MAINIGI: Objection. No
 4 foundation. Outside the scope of the
 5 Touhy authorization.
 6 THE WITNESS: Yes.
 7 QUESTIONS BY MS. SINGER:
 8 Q. Okay. And then it goes on to
 9 say, "Know your customers and, where
 10 applicable, the prescriber's business or
 11 professional practice."
 12 Is that also the DEA's guidance
 13 to industry as to what's required?
 14 A. Yes.
 15 Q. And "know the statutory
 16 factors, the DEA's final orders," and then
 17 lastly, "act consistently with DEA's goal:
 18 protect the public health and safety from the
 19 harms caused by diversion."
 20 Is that also the guidance that
 21 DEA gave to industry about complying with the
 22 Controlled Substances Act?
 23 A. Yes.
 24 MS. MAINIGI: Objection. Form.
 25 (Prevoznik Plaintiff's Exhibit

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1 MR. FINKELSTEIN: Scope.
 2 You can answer, if you know.
 3 THE WITNESS: I'm not sure.
 4 QUESTIONS BY MS. SINGER:
 5 Q. Okay. I'd like to direct you
 6 to page 10 of the presentation, Bates
 7 number 6061.
 8 And I'm sorry, before you go
 9 there, on the title page of the presentation
 10 it indicates Linden Barber is the director of
 11 DEA compliance operations at Quarles & Brady?
 12 A. Yes.
 13 Q. Okay. All right. So turning
 14 to slide 10, Bates number 6061, it says,
 15 "Know Your Regulator."
 16 Do you see where I'm reading?
 17 A. Yes.
 18 Q. "Access to customer due
 19 diligence files." And it says under the
 20 second bullet, "What is a customer's due
 21 diligence file? Not a record required by law
 22 to be made or kept. Proof that a
 23 distributor -- the distributor is attempting
 24 to prevent diversion. Proof that the
 25 distributor heeded DEA's warning. Exhibit A

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1 in DEA's case against you."
 2 Do you understand what
 3 Mr. Barber is saying here?
 4 MS. MAINIGI: Objection.
 5 Foundation. Outside the scope of the
 6 Touhy authorization.
 7 MR. FINKELSTEIN: Calls for
 8 speculation. I agree with the scope
 9 objection.
 10 MS. SINGER: Okay. Let me --
 11 I'm sorry. Let me rephrase it.
 12 QUESTIONS BY MS. SINGER:
 13 Q. Is it the DEA's position that a
 14 customer due diligence file is not required
 15 to be made or kept?
 16 MS. MAINIGI: Objection. Asked
 17 and answered. Objection. Form.
 18 QUESTIONS BY MS. SINGER:
 19 Q. It's certainly not -- when
 20 Mr. Barber was with DEA in that presentation
 21 we just looked at, he encouraged
 22 recordkeeping, correct, as a way a registrant
 23 could keep their DEA license, correct?
 24 A. Correct.
 25 Q. Okay. And here he's saying not

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1 All right. We can leave this
 2 document.
 3 Now, you were asked during
 4 day one or two of your deposition how a
 5 manufacturer would know if a prescriber was
 6 suspicious.
 7 Do you remember those
 8 questions?
 9 A. Yes.
 10 MR. EPPICH: Object to the
 11 form.
 12 THE WITNESS: Yes.
 13 QUESTIONS BY MS. SINGER:
 14 Q. Would DEA agree that a
 15 significant increase in a prescriber's volume
 16 is a sign of potential diversion?
 17 MR. EPPICH: Object to the
 18 form. Calls for a legal conclusion.
 19 THE WITNESS: Just volume
 20 alone?
 21 QUESTIONS BY MS. SINGER:
 22 Q. That it is one sign of
 23 potential diversion, yes.
 24 A. It --
 25 MR. EPPICH: Object to the

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1 a record required by law to be made or kept,
 2 correct?
 3 MS. MAINIGI: Objection to
 4 form. Objection. Outside the scope
 5 of the Touhy authorization. Calls for
 6 a legal conclusion.
 7 THE WITNESS: What he's saying
 8 is that -- I'm speculating on this,
 9 but what he's saying, to me, is that
 10 the actual terms "due diligence" is
 11 not in the regulations; however, I
 12 mean, the statute's to prevent -- to
 13 have effective means to guard against
 14 diversion, you would have to know who
 15 your customer is.
 16 And so doing that, you would
 17 have -- I mean, dealing with as many
 18 customers that each of these
 19 distributors have, you would have to
 20 know who your customers are. So if
 21 you don't have files on them, it would
 22 be very hard to maintain effective
 23 controls.
 24 QUESTIONS BY MS. SINGER:
 25 Q. Right. Understood.

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1 form.
 2 THE WITNESS: Potentially, yes.
 3 QUESTIONS BY MS. SINGER:
 4 Q. Okay. And that a prescriber
 5 who is prescribing at very high volume
 6 relative to other practitioners, that would
 7 also be another potential red flag of
 8 diversion, correct?
 9 MR. EPPICH: Object to the
 10 form. Form. Vague. Improper
 11 hypothetical. Calls for a legal
 12 conclusion.
 13 THE WITNESS: It could be. It
 14 just depends on what is the
 15 physician's practice; does he
 16 specialize in end of life or something
 17 like that. I mean, you'd have to take
 18 in other factors.
 19 QUESTIONS BY MS. SINGER:
 20 Q. Right. You have to look at the
 21 whole picture.
 22 But that's one sign that might
 23 alert you to take a closer look, correct?
 24 A. Correct.
 25 MR. EPPICH: Object to the

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1 form.
 2 QUESTIONS BY MS. SINGER:
 3 Q. Okay. And if the prescriber is
 4 prescribing at very high doses, again, one
 5 factor, depending on their specialty and
 6 patients, that might alert a registrant to
 7 potential diversion, correct?
 8 MR. EPPICH: Object to the
 9 form. Foundation. Calls for
 10 speculation. Calls for a legal
 11 conclusion.
 12 THE WITNESS: Correct.
 13 QUESTIONS BY MS. SINGER:
 14 Q. Okay. And these are the kinds
 15 of commonsense red flags that a registrant
 16 should know to apply without the DEA telling
 17 them to apply them, correct?
 18 MR. EPPICH: Object to form.
 19 Foundation. Calls for speculation.
 20 MR. FINKELSTEIN: Object to the
 21 form.
 22 THE WITNESS: Can you repeat
 23 it, please?
 24 QUESTIONS BY MS. SINGER:
 25 Q. These are the kinds of

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1 this information from, what is this
 2 document? Where was it created? Was
 3 it created by the plaintiffs?
 4 MS. MAINIGI: It says an expert
 5 report of Lacey Keller.
 6 MR. FINKELSTEIN: Additionally,
 7 information concerning this doctor may
 8 be subject to various law enforcement
 9 privileges, and it's outside the
 10 scope.
 11 But I'm going to specifically
 12 instruct you not to testify about
 13 ongoing investigations.
 14 QUESTIONS BY MS. SINGER:
 15 Q. So would writing 21,000
 16 prescriptions in a year when the average
 17 doctor in the same specialty wrote 500 be a
 18 red flag of potential diversion to the DEA?
 19 MR. EPPICH: Object to form.
 20 MR. MAHADY: Objection to form.
 21 Objection to scope. Incomplete
 22 hypothetical. Foundation.
 23 THE WITNESS: Yes.
 24 QUESTIONS BY MS. SINGER:
 25 Q. Okay. And then turning to the

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1 commonsense red flags that a registrant
 2 should know to apply in looking for diversion
 3 without the DEA telling them specifically to
 4 look for them, correct?
 5 MR. EPPICH: Same objections.
 6 THE WITNESS: Yes.
 7 (Prevoznik Plaintiff's Exhibit
 8 P50 marked for identification.)
 9 QUESTIONS BY MS. SINGER:
 10 Q. I'm showing you Exhibit 50,
 11 Mr. Prevoznik. These are two -- oh, I'm
 12 sorry, this is a prescriber in Solon, Ohio.
 13 I'm sorry. I'm not -- okay.
 14 Dr. Akhtar-Zaidi in Solon, Ohio.
 15 And it says here, "Wrote over
 16 21,000 opioid prescriptions in 2011 when the
 17 average doctor in his specialty wrote 500."
 18 Would the DEA consider that to
 19 be a red flag of potential diversion?
 20 MR. MAHADY: Object to form.
 21 Objection. Foundation. Objection to
 22 the scope. Outside the Touhy
 23 authorization.
 24 MR. FINKELSTEIN: Hang on.
 25 MR. MAHADY: And also, where is

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1 next page of that slide. I'm sorry --
 2 A. I don't have it.
 3 Q. Okay. Sorry.
 4 (Prevoznik Plaintiff's Exhibits
 5 P51 and P52 marked for
 6 identification.)
 7 QUESTIONS BY MS. SINGER:
 8 Q. Showing you slide 51,
 9 Dr. Adolph Harper in Akron, Ohio.
 10 I'm also going to show you the
 11 sentencing memo. We'll mark that as
 12 Exhibit 52.
 13 MR. FINKELSTEIN: So while
 14 we're shuffling paper, I can get my
 15 concerns and objection on the record.
 16 My understanding is that the
 17 task force officers have been
 18 authorized to give testimony about
 19 this doctor and this information. I
 20 can tell you this witness has not been
 21 prepped to.
 22 And so I'm going to instruct
 23 you not to answer questions about this
 24 specific doctor.
 25 And I think you have a witness

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1 who will.
 2 MS. SINGER: All right. I'm
 3 only asking about whether these are
 4 red flags generally.
 5 MR. FINKELSTEIN: You can
 6 answer about general red flags.
 7 MS. SINGER: Okay.
 8 QUESTIONS BY MS. SINGER:
 9 Q. So if you turn on exhibit --
 10 which exhibit is this? 53? 52?
 11 Okay. The sentencing memo --
 12 MR. COOPER: Do you have an
 13 extra copy of the sentencing memo?
 14 QUESTIONS BY MS. SINGER:
 15 Q. Which is PLTF_2804_000013676.
 16 It's the government's sentencing memo,
 17 memorandum in United States of America versus
 18 Adolph Harper.
 19 You on the right document?
 20 A. Uh-huh, yes.
 21 Q. Okay. And if you turn to
 22 page 4, in the second paragraph, the first
 23 full paragraph of the page, it says, "The
 24 atmosphere of Harper's office, like his
 25 prescribing practices, was more akin to a

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1 QUESTIONS BY MS. SINGER:
 2 Q. Yes.
 3 Would those signs observed by a
 4 registrant about a prescriber's practice have
 5 been red flags of potential diversion?
 6 MR. MAHADY: Same objections.
 7 THE WITNESS: Yes.
 8 QUESTIONS BY MS. SINGER:
 9 Q. Are these kinds of red flags
 10 that we just went through with these two
 11 prescribers things that registrants who are
 12 observing the practices or seeing this data
 13 should have been able to figure out for
 14 themselves, should have been able to identify
 15 them as red flags?
 16 MR. MAHADY: Objection to form.
 17 Foundation. Same objection regarding
 18 the scope.
 19 THE WITNESS: Yes.
 20 QUESTIONS BY MS. SINGER:
 21 Q. Did a manufacturer who observed
 22 a doctor's office that looked like a drug
 23 trafficking operation, with patients passed
 24 out or vomiting in the office or urinating on
 25 themselves, have a duty to do more than just

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1 street-level drug trafficking operation
 2 rather than medical office. Harper's
 3 customers waited for hours to see Harper.
 4 Many of those customers exhibited behaviors
 5 consistent with drug abuse. Witnesses
 6 reported seeing customers passed out in the
 7 hallway and office while waiting to see
 8 Harper, were vomiting or urinating on the
 9 floor while waiting in the waiting room.
 10 Customers were also combative and aggressive
 11 with Harper's staff members if there was any
 12 delay in receiving their drugs."
 13 Would a registrant observing
 14 this medical office have seen a red flag of
 15 potential diversion?
 16 MR. MAHADY: Objection to form.
 17 Objection to foundation. Outside the
 18 scope of the Touhy authorization as
 19 the government just explained it.
 20 Question specifically relates
 21 to a doctor whose name was used at
 22 least four or five times in forming
 23 your question.
 24 THE WITNESS: Can you repeat
 25 it?

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1 stopping to market to that doctor but also to
 2 report that doctor to the DEA?
 3 MR. COOPER: Objection. Form.
 4 Foundation. Scope.
 5 MR. FINKELSTEIN: Objection.
 6 Foundation. Incomplete hypothetical.
 7 THE WITNESS: Could you repeat
 8 it?
 9 QUESTIONS BY MS. SINGER:
 10 Q. Did a manufacturer who observed
 11 that kind of practice that we just described
 12 have an obligation to report that doctor to
 13 the DEA or other law enforcement or just to
 14 stop marketing to that doctor? Would that
 15 have been enough?
 16 MR. O'CONNOR: Objection.
 17 Form. Foundation. Scope.
 18 MR. EPPICH: Objection.
 19 Incomplete hypothetical.
 20 THE WITNESS: So I just want to
 21 make sure I'm clear on the question.
 22 If the manufacturer had seen
 23 this?
 24 QUESTIONS BY MS. SINGER:
 25 Q. That's correct.

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1 A. Right.
 2 They should stop shipments?
 3 Q. Is it enough to stop marketing
 4 to the doctor, or do they also have to report
 5 that doctor as part of maintaining effective
 6 controls to prevent diversion?
 7 MR. O'CONNOR: Same objections.
 8 THE WITNESS: I mean, they
 9 should be telling us that.
 10 QUESTIONS BY MS. SINGER:
 11 Q. Now, does the fact that there
 12 are bad doctors who are writing illegitimate
 13 prescriptions or pharmacies that are
 14 dispensing illegally relieve distributors or
 15 manufacturers of their duty to review their
 16 own information and data for suspicious
 17 orders and signs of diversion?
 18 MS. MAINIGI: Objection.
 19 Vague. Objection. Outside the scope
 20 of the Touhy authorization.
 21 Objection. Foundation.
 22 MR. FINKELSTEIN: I'll object
 23 to the form.
 24 THE WITNESS: No.
 25

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1 inappropriate to be marking this in a
 2 deposition.
 3 QUESTIONS BY MS. SINGER:
 4 Q. Do registrants who close their
 5 eyes, fail to report signs of suspicious
 6 order, comply with the Controlled Substances
 7 Act?
 8 MR. MAHADY: Objection. Form.
 9 Foundation. Calls for a legal
 10 conclusion.
 11 THE WITNESS: No, they don't.
 12 QUESTIONS BY MS. SINGER:
 13 Q. We can take down the monkeys.
 14 They're probably not compliant with the CSA
 15 either.
 16 MR. EPPICH: Objection.
 17 QUESTIONS BY MS. SINGER:
 18 Q. You testified before that the
 19 DEA doesn't know what range of information
 20 registrants have available to them, correct?
 21 A. Correct.
 22 Q. And they don't have to share
 23 with the DEA all the data and information
 24 they have on their customers, correct?
 25 A. Correct.

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1 QUESTIONS BY MS. SINGER:
 2 Q. And in fact, in a closed
 3 system, the participants in the supply chain,
 4 those who are on the inside, have a duty to
 5 look out for bad doctors and bad pharmacies,
 6 correct?
 7 MR. EPPICH: Object to the
 8 form. Foundation. Calls for a legal
 9 conclusion.
 10 THE WITNESS: Yes.
 11 (Prevoznik Plaintiffs Exhibit
 12 P53 marked for identification.)
 13 QUESTIONS BY MS. SINGER:
 14 Q. Okay. Let's go to the -- I'm
 15 going to show you Exhibit 53. No Bates
 16 number, just monkeys.
 17 Do you recognize this image of
 18 the see no evil, hear no evil, speak no evil,
 19 Mr. Prevoznik?
 20 A. Yes.
 21 MR. MAHADY: Objection. Form.
 22 Foundation. Relevance to anything.
 23 MS. MAINIGI: It's completely
 24 outside the scope of the Touhy
 25 authorization. I think it's highly

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1 Q. Now, you talked about the fact
 2 that DEA doesn't set a formula or a threshold
 3 for industry to apply, correct?
 4 A. Correct.
 5 Q. And is that -- is the reason
 6 for that because the DEA wouldn't necessarily
 7 be able to capture what the industry knows
 8 about its own customers in setting a
 9 threshold?
 10 MR. EPPICH: Object to the
 11 form. Vague.
 12 THE WITNESS: I think it's
 13 part -- a part of -- certainly that's
 14 part of it, but the other part would
 15 also be we don't regulate the practice
 16 of medicine, so we're not interfering
 17 with what doctors are doing to treat
 18 their patients.
 19 So in discussions with -- when
 20 these thresholds and things -- it also
 21 affects the opposite side. So it's
 22 not only the diverted side, but it's
 23 also legitimate patients who can't get
 24 them because of these thresholds that
 25 are in place. So it's affecting both

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1 sides of the -- it's a delicate
 2 balance.
 3 QUESTIONS BY MS. SINGER:
 4 Q. And so you leave that to a
 5 registrant who has all of that information,
 6 correct?
 7 MR. EPPICH: Objection.
 8 Foundation. Form.
 9 THE WITNESS: Correct.
 10 QUESTIONS BY MS. SINGER:
 11 Q. Okay. And the danger is if the
 12 DEA were to set the threshold too high, it
 13 wouldn't be a real check on identifying
 14 suspicious orders, correct?
 15 MR. EPPICH: Object to the
 16 form. Incomplete hypothetical.
 17 MS. MAINIG: Speculation.
 18 THE WITNESS: Yes.
 19 QUESTIONS BY MS. SINGER:
 20 Q. And if you set it too low, as
 21 you said, patients might not be able to get
 22 medicine they need, correct?
 23 MR. EPPICH: Object to the
 24 form. Incomplete hypothetical. Calls
 25 for speculation.

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1 Q. Okay. And it says -- if you
 2 look down this document, you see
 3 Mr. Crawford, I think, three paragraphs from
 4 the bottom. Okay. I'm sorry, let's go up
 5 from that to the question.
 6 "During the distributor
 7 breakout session, suspicious order monitoring
 8 was certainly a hotbed of discussion. Are
 9 there any plans for DEA to publicize
 10 information to implement SOM, or suspicious
 11 order monitoring, incorporate algorithms
 12 where products are more likely to be
 13 diverted?"
 14 Do you see where I'm reading?
 15 A. Yes.
 16 Q. Okay. And then can you read
 17 Mr. Crawford's response?
 18 A. "Whatever we put out will be
 19 outdated by the time we put it out. You're
 20 looking at a number. Tell me how much --
 21 tell me how much that we can't exceed. DEA
 22 can't do that. It's part of your due
 23 diligence, knowing your customer."
 24 Q. And does that reflect what you
 25 just testified to in the guidance that DEA

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1 THE WITNESS: Yes.
 2 QUESTIONS BY MS. SINGER:
 3 Q. And so it's not that the DEA
 4 has some answer on what the threshold should
 5 be and isn't telling industry; it's that the
 6 DEA is actually saying that industry knows
 7 better from its own customers, correct?
 8 MR. EPPICH: Object to the
 9 form. Calls for speculation.
 10 THE WITNESS: They're in a
 11 better position than we are.
 12 (Prevoznik Plaintiffs Exhibit
 13 P54 marked for identification.)
 14 QUESTIONS BY MS. SINGER:
 15 Q. Okay. So let's go to -- I'm
 16 showing you Exhibit 54.
 17 So do you recognize
 18 MNK-T1_0008504654?
 19 A. I recognize the names.
 20 Q. Okay. Which names do you
 21 recognize?
 22 A. Mark Caverly and James
 23 Crawford.
 24 Q. And who are they?
 25 A. Former employees of DEA.

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1 gave industry?
 2 A. Yes.
 3 MR. MAHADY: Objection. Form.
 4 THE WITNESS: Yes.
 5 QUESTIONS BY MS. SINGER:
 6 Q. And then can you read
 7 Mr. Caverly's comment at the bottom of the
 8 page?
 9 A. From the question "What does
 10 the DEA expect?"
 11 Q. That's right.
 12 A. "Previously, DEA sat down with
 13 the National Drug Association with an
 14 algorithm DEA standpoint - you know your
 15 customers better than we do. DEA stepped
 16 away from providing guidelines. It's not
 17 going to happen."
 18 Q. Does that also reflect DEA's
 19 view as to why it wouldn't provide a
 20 threshold to industry?
 21 MR. EPPICH: Object to the
 22 form. Foundation. Calls for
 23 speculation.
 24 THE WITNESS: Yes.
 25 (Prevoznik Plaintiffs Exhibit

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1 P55 marked for identification.)
 2 QUESTIONS BY MS. SINGER:
 3 Q. Okay. Showing you Exhibit 55.
 4 My goal here is to make your pile go up and
 5 mine go down.
 6 All right. This is
 7 MCKMDL00561303, executive summary regarding
 8 the HDMA document.
 9 Have you seen this document
 10 before, Mr. Prevoznik?
 11 A. I'm not sure.
 12 Q. Okay. Let me direct you to the
 13 last page, Bates number 306. It says in that
 14 top bullet to question 10, "This is another
 15 area that we have made great strides in over
 16 the past few years. Our analytical
 17 capabilities provide us with greater insight
 18 into our own customer base. We have this
 19 data already and frankly are in a position to
 20 provide better information to DEA than they
 21 could provide to us."
 22 Does DEA agree with that
 23 statement?
 24 MR. EPPICH: Object to the
 25 form. Foundation.

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1 Q. Okay. Based on your experience
 2 in all of your years at DEA in management and
 3 as a diversion investigator and as the
 4 representative of the DEA here today, did DEA
 5 make the best judgments it could at the time
 6 to use your authority and resources most
 7 effectively to prevent diversion?
 8 MR. EPPICH: Object to form.
 9 Vague.
 10 MS. MAINIGI: And objection.
 11 Outside the scope of the Touhy
 12 authorization.
 13 THE WITNESS: Yes, I think we
 14 did.
 15 QUESTIONS BY MS. SINGER:
 16 Q. Had distributors reported
 17 suspicious orders to the DEA as the law
 18 required would DEA have been able to use its
 19 resources more effectively to identify and
 20 prevent diversion?
 21 MR. EPPICH: Object to the
 22 form. Calls for a legal conclusion.
 23 Vague.
 24 MS. MAINIGI: And outside the
 25 scope of the Touhy authorization.

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1 THE WITNESS: Yes.
 2 QUESTIONS BY MS. SINGER:
 3 Q. And it says as a sidenote, "DEA
 4 does not have dispensing data, nor do they
 5 have noncontrol data," correct?
 6 A. Correct.
 7 Q. Okay. All right. Let's move
 8 to -- no, new area.
 9 In the first two days of your
 10 deposition, you were offered -- you were
 11 asked a series of questions about things DEA
 12 could have done differently: Did you set up
 13 task forces or use ARCOS platforms in a
 14 different way.
 15 Do you remember that line of
 16 questioning?
 17 A. Yes.
 18 Q. Now, when you came into DEA,
 19 what was your first position?
 20 A. Diversion investigator in the
 21 Philadelphia field office.
 22 Q. Okay. So you were out there
 23 doing investigations and inspections and
 24 building cases, correct?
 25 A. Correct.

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1 MS. DO AMARAL: Incomplete
 2 hypothetical.
 3 THE WITNESS: I believe so.
 4 MR. EPPICH: I second the
 5 outside the scope of the Touhy
 6 authorization.
 7 QUESTIONS BY MS. SINGER:
 8 Q. Could you state your answer
 9 again?
 10 A. I believe so.
 11 Q. Okay. And if registrants had
 12 reported suspicious orders to the DEA, does
 13 the DEA believe that there would have been
 14 less diversion, less abuse and less death?
 15 MR. EPPICH: Objection. Form.
 16 Foundation. Calls for speculation.
 17 Incomplete hypothetical. Outside the
 18 scope of the Touhy authorization.
 19 MR. FINKELSTEIN: Scope. Calls
 20 for speculation.
 21 THE WITNESS: Yes.
 22 QUESTIONS BY MS. SINGER:
 23 Q. Would you agree that this line
 24 of questions about what the DEA could have
 25 done or should have done sounds a lot like

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1 blaming the DEA for not catching industry at
 2 breaking the law?
 3 MR. EPPICH: Object to the
 4 form. Foundation. Incomplete
 5 hypothetical. Outside the scope of
 6 the Touhy authorization.
 7 MR. FINKELSTEIN: Scope. Calls
 8 for speculation.
 9 THE WITNESS: Could you please
 10 repeat it?
 11 QUESTIONS BY MS. SINGER:
 12 Q. Would you agree that this line
 13 of questions about what the DEA could have
 14 done and should have done sounds a lot like
 15 blaming the DEA for not catching the industry
 16 in breaking the law?
 17 MR. EPPICH: Same objections.
 18 MR. FINKELSTEIN: Same
 19 objections.
 20 THE WITNESS: You're asking me
 21 personally?
 22 QUESTIONS BY MS. SINGER:
 23 Q. Yes.
 24 MR. EPPICH: Same objections.
 25 THE WITNESS: Me, personally,

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1 12-year-old or anyplace else they shouldn't
 2 be?
 3 MR. EPPICH: Object to the
 4 form. Incomplete hypothetical. Calls
 5 for a legal conclusion. Scope.
 6 Vague.
 7 MR. FINKELSTEIN: I'll object
 8 to the form.
 9 THE WITNESS: Yes.
 10 QUESTIONS BY MS. SINGER:
 11 Q. And do you think there's
 12 anything about that rule that isn't clear or
 13 fair to registrants?
 14 MR. EPPICH: Object to the
 15 form. Vague. Incomplete
 16 hypothetical. Scope. Calls for a
 17 legal conclusion.
 18 MR. FINKELSTEIN: I'm going to
 19 object that that's outside the scope
 20 of the Touhy authorization.
 21 You can answer in your personal
 22 capacity.
 23 THE WITNESS: Could you please
 24 repeat it?
 25

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1 it certainly would have made a huge
 2 difference.
 3 QUESTIONS BY MS. SINGER:
 4 Q. Does the obligation to maintain
 5 effective controls to prevent diversion exist
 6 whether or not you are caught?
 7 MR. EPPICH: Objection to the
 8 form. Incomplete hypothetical. Calls
 9 for a legal conclusion. Outside the
 10 scope of the Touhy authorization as it
 11 may divulge the deliberative process
 12 of the DEA.
 13 MR. FINKELSTEIN: I appreciate
 14 your concern about our deliberative
 15 process.
 16 You can answer.
 17 THE WITNESS: Yes.
 18 QUESTIONS BY MS. SINGER:
 19 Q. And is it true that the cost of
 20 doing a business, of getting a license that
 21 allows you to make money by making and
 22 selling and distributing narcotics, is that
 23 you have to do your best to follow the law
 24 and prevent those narcotics from ending up
 25 on -- in the street or in the pockets of a

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1 QUESTIONS BY MS. SINGER:
 2 Q. I have to scroll back through a
 3 lot of objections.
 4 Is there anything about that
 5 rule, to follow the law to prevent diversion,
 6 that isn't clear or fair to registrants?
 7 MR. EPPICH: Same objections.
 8 THE WITNESS: My personal
 9 perspective, no, there isn't.
 10 (Prevoznik Plaintiff's Exhibit
 11 P56 marked for identification.)
 12 QUESTIONS BY MS. SINGER:
 13 **Q. I'm going to show you**
 14 **Exhibit 56.**
 15 **Mr. Prevoznik, this is our**
 16 **effort to put in a timeline the actions DEA**
 17 **took against defendants in this litigation.**
 18 **Does this capture the major**
 19 **enforcement initiatives that DEA took against**
 20 **distributors, manufacturers and distributors,**
 21 **including pharmacies?**
 22 MR. EPPICH: Object to the
 23 form. Objection. Foundation.
 24 Objection to inaccuracy of the data
 25 that may or may not be in the

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1 document.
 2 MS. MAINIGI: Outside the scope
 3 of the Touhy authorization.
 4 MR. FINKELSTEIN: Yeah, I'm
 5 going to repeat my concern about the
 6 scope. You've been authorized to
 7 testify about administrative actions
 8 in closed settlements with the
 9 defendants.
 10 MS. SINGER: That's what's
 11 here.
 12 MR. FINKELSTEIN: If you're
 13 representing that, then subject to
 14 that instruction, you can answer.
 15 MR. MAHADY: I'm also going to
 16 object to the extent that the
 17 demonstrative clearly shows things
 18 that are not an enforcement action,
 19 including references to letters --
 20 MS. MAINIGI: Right.
 21 MR. MAHADY: -- that are not
 22 from the DEA, DOJ and, in fact, come
 23 from the defendant.
 24 MS. MAINIGI: That is not what
 25 it is represented by plaintiffs to be.

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1 to do those questions.
 2 QUESTIONS BY MS. SINGER:
 3 Q. I'm just asking if this
 4 represents the scale and number of
 5 enforcement actions that DEA took against the
 6 defendants in this litigation.
 7 MR. EPPICH: Objection to form
 8 and foundation.
 9 QUESTIONS BY MS. SINGER:
 10 Q. To the extent you know.
 11 MR. FINKELSTEIN: And my
 12 instruction to you is you're
 13 authorized to answer based on
 14 administrative actions and/or
 15 settlements that the DEA has entered
 16 into with any of the defendants, but
 17 limit your answer to that.
 18 MR. RUIZ: And objection to the
 19 extent that this chart has enforcement
 20 actions against entities who are not
 21 named defendants in this action.
 22 MR. FINKELSTEIN: Do you
 23 understand my instruction?
 24 **THE WITNESS: Yeah.**
 25 **It appears to have most of the**

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1 MR. RUIZ: Also object in it
 2 lists the alleged enforcement actions
 3 and do not relate to distribution.
 4 MR. MAHADY: And enforcement
 5 actions by the state courts.
 6 MS. SINGER: So these are all
 7 facts that have been established or
 8 will be established in the course of
 9 this litigation.
 10 To the extent that defendants
 11 have an argument that something here
 12 wasn't tied together, that's an
 13 argument they can make as to
 14 admissibility.
 15 MS. MAINIGI: You're asking
 16 this corporate representative to
 17 somehow bless your document when
 18 you've just created it and provided it
 19 to him.
 20 If you want to go point by
 21 point through this document and ask
 22 him if he knows about those and
 23 whether they're enforcement actions,
 24 go ahead.
 25 MS. SINGER: So you're welcome

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1 highlights.
 2 QUESTIONS BY MS. SINGER:
 3 Q. Okay. And is it fair to say
 4 that the DEA has investigated or taken action
 5 against virtually every major distributor of
 6 opioids over the last 15 years?
 7 MR. EPPICH: Object to form and
 8 foundation. Calls for speculation.
 9 THE WITNESS: Yes.
 10 MS. FUMERTON: Also vague.
 11 QUESTIONS BY MS. SINGER:
 12 Q. And also the major pharmacy
 13 chains that distribute opioids?
 14 MR. EPPICH: Same objections.
 15 THE WITNESS: Yes.
 16 QUESTIONS BY MS. SINGER:
 17 Q. And also manufacturers like
 18 Mallinckrodt and Purdue, correct?
 19 MR. EPPICH: Same objections.
 20 THE WITNESS: Correct.
 21 QUESTIONS BY MS. SINGER:
 22 Q. Now, this chart doesn't reflect
 23 additional actions that the DEA took against
 24 doctors and pharmacists, correct?
 25 MR. EPPICH: Objection.

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1 Foundation. Calls for speculation.
 2 Form.
 3 THE WITNESS: Yes.
 4 QUESTIONS BY MS. SINGER:
 5 Q. Or actions you took against
 6 independent pharmacies.
 7 And I take it the DEA also took
 8 enforcement action against non-chain
 9 pharmacies, correct?
 10 MR. EPPICH: Objection.
 11 Foundation. Calls for speculation.
 12 Form.
 13 MR. FINKELSTEIN: Scope. I
 14 don't want to ask questions.
 15 You can answer in your personal
 16 capacity.
 17 THE WITNESS: Yes. In my
 18 personal capacity, yes, we would.
 19 QUESTIONS BY MS. SINGER:
 20 Q. Okay. So this isn't everything
 21 the DEA did in this time period, correct?
 22 A. Correct.
 23 Q. Okay. All right. Moving on.
 24 Now, industry has talked about
 25 their inability to get access to ARCOS data

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1 MR. EPPICH: Object to the
 2 form.
 3 QUESTIONS BY MS. SINGER:
 4 Q. And you haven't taken those
 5 actions based on data from other registrants,
 6 correct?
 7 MR. EPPICH: Object to the
 8 form. Vague.
 9 THE WITNESS: Correct.
 10 QUESTIONS BY MS. SINGER:
 11 Q. Right.
 12 So just to be perfectly clear,
 13 you didn't expect Cardinal to know what
 14 McKesson or AmerisourceBergen was supplying
 15 to a customer, correct?
 16 A. Correct.
 17 MS. MAINIGI: Objection. Form.
 18 QUESTIONS BY MS. SINGER:
 19 Q. Is it the DEA's experience that
 20 suspicious orders filled by manufacturers,
 21 distributors and pharmacies were suspicious
 22 in their own right without anybody else's
 23 data?
 24 MR. EPPICH: Object to the
 25 form. Calls for a legal conclusion.

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1 on other distributors, correct?
 2 Do you remember those
 3 questions?
 4 A. Yes.
 5 Q. Okay. Now, isn't it true that
 6 even without information on a competitor's
 7 orders, that registrants can identify
 8 suspicious orders and potential diversion?
 9 MR. EPPICH: Objection to form.
 10 Foundation. Calls for speculation.
 11 THE WITNESS: So essentially
 12 their own data.
 13 QUESTIONS BY MS. SINGER:
 14 Q. Yes.
 15 A. Yes.
 16 Q. Okay. And when you've taken --
 17 when you, the DEA, has taken enforcement
 18 actions or entered into settlement agreements
 19 with registrants, you've looked at their own
 20 data, correct?
 21 A. Yes.
 22 Q. And what those registrants
 23 should have known or did know about their own
 24 customers, correct?
 25 A. Correct.

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1 Vague.
 2 MR. RUIZ: Foundation.
 3 THE WITNESS: Yes.
 4 QUESTIONS BY MS. SINGER:
 5 Q. And when distributors take on
 6 or registrants take on a new customer, DEA
 7 recommends that they ask whether that
 8 customer uses other distributors, correct?
 9 MR. EPPICH: Object to the
 10 form. Foundation.
 11 THE WITNESS: Yes.
 12 QUESTIONS BY MS. SINGER:
 13 Q. And with dispensing data -- I'm
 14 sorry.
 15 And they also -- the DEA also
 16 recommends that a registrant obtain -- or a
 17 distributor -- let me try that again.
 18 DEA also recommends that a
 19 distributor obtain dispensing data from a
 20 pharmacy before they take them on as a
 21 customer, correct?
 22 MR. EPPICH: Object to form.
 23 Foundation. Vague as to time.
 24 THE WITNESS: Yes, if they can
 25 get it.

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1 QUESTIONS BY MS. SINGER:
 2 Q. Okay. And with dispensing
 3 data, it would be obvious to a distributor if
 4 the pharmacy received controlled substances
 5 from more than one distributor, correct?
 6 MR. EPPICH: Object to form.
 7 Foundation. Calls for speculation.
 8 MS. MAINIGI: Outside the scope
 9 of the Touhy authorization.
 10 MR. FINKELSTEIN: Join in the
 11 scope objection.
 12 THE WITNESS: Could you run
 13 that by me again?
 14 QUESTIONS BY MS. SINGER:
 15 Q. Yeah, let me try to be clearer
 16 in my question.
 17 If you get the dispensing
 18 data -- if a distributor gets the dispensing
 19 data from a customer and it gets more
 20 controlled substances than that distributor
 21 supplies, then the distributor knows that
 22 it's getting controlled substances from other
 23 distributors, correct?
 24 MR. EPPICH: Object to form.
 25 Foundation. Calls for speculation.

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1 MR. EPPICH: Objection. Calls
 2 for speculation.
 3 THE WITNESS: Yes, they should
 4 be.
 5 QUESTIONS BY MS. SINGER:
 6 Q. They should?
 7 A. They should.
 8 Q. A distributor should ask?
 9 A. Should ask for it.
 10 MR. EPPICH: Same objections.
 11 QUESTIONS BY MS. SINGER:
 12 Q. And if a pharmacy directed a
 13 distributor that it should not -- or could
 14 not go into its store and talk with its
 15 personnel or get a feel for that store,
 16 should that be another red flag to that
 17 distributor?
 18 MR. EPPICH: Same objections.
 19 MR. FINKELSTEIN: Incomplete
 20 hypothetical.
 21 THE WITNESS: Yes.
 22 QUESTIONS BY MS. SINGER:
 23 Q. Okay. And that's true whether
 24 it's a chain pharmacy or an independent
 25 pharmacy, correct?

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1 Outside the scope.
 2 THE WITNESS: It could be from
 3 another distributor, or it could be
 4 from another pharmacy selling stuff to
 5 them. So it's not necessarily another
 6 distributor. It could be another
 7 registrant that's selling them.
 8 QUESTIONS BY MS. SINGER:
 9 Q. Okay. But it's another
 10 supplier other than -- or distributor,
 11 correct?
 12 A. Yes.
 13 MR. EPPICH: Same objections.
 14 QUESTIONS BY MS. SINGER:
 15 Q. Now, if a pharmacy won't
 16 provide dispensing information to a
 17 distributor, would that be a red flag that
 18 the distributor needs to look more closely at
 19 that customer?
 20 MR. EPPICH: Object to the
 21 form. Vague as to time.
 22 MS. MAINIGI: Scope. Outside
 23 the scope of the Touhy authorization.
 24 MR. FINKELSTEIN: Incomplete
 25 hypothetical.

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1 MR. EPPICH: Same objections.
 2 THE WITNESS: Correct.
 3 QUESTIONS BY MS. SINGER:
 4 Q. Now, distributors have
 5 information on both controlled and
 6 noncontrolled substances that are ordered by
 7 a customer, correct?
 8 MR. EPPICH: Objection.
 9 Foundation. Form and vague.
 10 THE WITNESS: Yes.
 11 QUESTIONS BY MS. SINGER:
 12 Q. And that lets them see where a
 13 customer's order of controlled substances is
 14 disproportionate to its other orders,
 15 correct?
 16 MR. EPPICH: Objection. Form.
 17 Foundation. Calls for speculation.
 18 Vague.
 19 THE WITNESS: Yes.
 20 QUESTIONS BY MS. SINGER:
 21 Q. And so if a customer is
 22 ordering a lot of opioids and very little
 23 antibiotics or diabetes medicine, that would
 24 be one potential red flag of diversion,
 25 correct?

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1 MR. EPPICH: Objection. Form.
 2 Foundation. Calls for a legal
 3 conclusion.
 4 THE WITNESS: Yes, it could
 5 potentially be a red flag.
 6 QUESTIONS BY MS. SINGER:
 7 Q. A red flag?
 8 A. Yes.
 9 Q. Okay. And it's also true that
 10 pharmacies that order a certain mix of drugs
 11 that are abused together, that that can be
 12 another red flag of potential diversion,
 13 correct?
 14 MR. EPPICH: Objection. Form.
 15 Foundation. Calls for a legal
 16 conclusion.
 17 THE WITNESS: Yes.
 18 QUESTIONS BY MS. SINGER:
 19 Q. Now, distributors have that
 20 data on other noncontrolled substance orders,
 21 correct?
 22 MR. EPPICH: Objection. Form.
 23 Foundation. Calls for speculation.
 24 MR. FINKELSTEIN: Scope. Calls
 25 for speculation.

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1 well.
 2 Q. Okay. But you don't routinely
 3 get antibiotics or other non-diverted or
 4 abused drugs, correct?
 5 MR. EPPICH: Objection. Asked
 6 and answered. Form.
 7 THE WITNESS: Correct.
 8 QUESTIONS BY MS. SINGER:
 9 Q. And DEA doesn't have
 10 prescribing information in ARCOS, correct?
 11 MR. EPPICH: Objection. Form.
 12 Vague.
 13 THE WITNESS: Correct.
 14 QUESTIONS BY MS. SINGER:
 15 Q. But that information is
 16 certainly useful in detecting suspicious
 17 orders or potential diversion, correct?
 18 MR. EPPICH: Objection. Calls
 19 for a legal conclusion. Form.
 20 THE WITNESS: Correct.
 21 QUESTIONS BY MS. SINGER:
 22 Q. Is DEA aware that registrants
 23 have information -- have access to
 24 information on cash payments that are
 25 received by pharmacies?

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1 THE WITNESS: Yes.
 2 QUESTIONS BY MS. SINGER:
 3 Q. But DEA doesn't get reporting
 4 from distributors on noncontrolled substances
 5 ordered by customers, correct?
 6 A. No, we do not.
 7 We do have some distributors
 8 that have told us -- like now everybody is
 9 looking at gabapentin, so the distributors
 10 have said, "We are going to take a harder
 11 look at that, that one."
 12 Q. Okay. But in general, and
 13 certainly over the time period we've been
 14 talking about from 1996 until now, you --
 15 A. There's been -- I mean, there's
 16 been other substances that they've said --
 17 you know, I remember ketamine. That was one
 18 they said, oh, it was not a noncontrol and we
 19 made it controlled.
 20 So there's been other drugs
 21 that they have stepped up and said, you know,
 22 "We need to keep an eye on these. We're
 23 going to -- can we put them in the controlled
 24 substance cage because we are seeing that?"
 25 So we have had those dialogs with them as

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1 MR. EPPICH: Objection. Form.
 2 Calls for speculation.
 3 MR. FINKELSTEIN: Scope. Calls
 4 for speculation.
 5 THE WITNESS: I believe we do.
 6 I believe they do.
 7 QUESTIONS BY MS. SINGER:
 8 Q. They do?
 9 A. Yeah.
 10 Q. And does DEA have that
 11 information?
 12 MR. EPPICH: Objection.
 13 THE WITNESS: If we subpoena
 14 it.
 15 QUESTIONS BY MS. SINGER:
 16 Q. Okay. But not in the regular
 17 course --
 18 A. No.
 19 Q. -- of identifying potential
 20 diversion?
 21 A. Right.
 22 Q. Now, does ARCOS data tell you
 23 whether a customer is near a hospital or a
 24 cancer center or a hospice treatment
 25 facility?

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1 A. No, it's just transactional
 2 data.
 3 Q. Okay. But distributors and
 4 manufacturers would learn that information in
 5 their due diligence on customers, correct?
 6 MR. EPPICH: Objection. Form.
 7 Foundation. Calls for speculation.
 8 THE WITNESS: Yes.
 9 QUESTIONS BY MS. SINGER:
 10 Q. Okay. And when you get, for
 11 instance, a -- when you, DEA, gets, for
 12 instance, a big stack of ingredient limit
 13 reports, you can't tell from that whether
 14 orders of large numbers are by facilities
 15 that are near hospitals or oncology centers
 16 or anything like that, correct?
 17 MR. EPPICH: Object to the
 18 form.
 19 THE WITNESS: I'm sorry, could
 20 you repeat it?
 21 QUESTIONS BY MS. SINGER:
 22 Q. So when you get, you know, a
 23 big stack of excess order reports or
 24 ingredient limit reports, you can't tell if a
 25 large order is from a customer that's near an

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1 Okay. And this represents the
 2 official position of the Department of
 3 Justice and DEA, correct?
 4 MR. EPPICH: Objection. Form.
 5 Foundation.
 6 THE WITNESS: Yes.
 7 QUESTIONS BY MS. SINGER:
 8 Q. Okay. Turning to page 4,
 9 please. The middle paragraph, second
 10 sentence says, "Release of the personally
 11 identifiable information of individual
 12 registrants without their consent would
 13 violate the Privacy Act."
 14 Do you see where I'm reading?
 15 A. Yes.
 16 Q. "Therefore, DOJ objects to the
 17 production thereof under its Touhy
 18 regulations. Disclosure would improperly
 19 reveal trade secrets without the owners'
 20 consent, and, therefore, the DOJ objects to
 21 the production thereof under its Touhy
 22 regulations," citing them. "Production of
 23 this data would reveal specific details
 24 regarding the scope and breadth of their
 25 market share, which is likely to cause

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1 oncology center or a hospital, for instance,
 2 correct?
 3 MR. EPPICH: Object to the
 4 form.
 5 THE WITNESS: Correct. From
 6 the reports, you cannot.
 7 QUESTIONS BY MS. SINGER:
 8 Q. Does the DEA get chargeback
 9 data?
 10 A. No.
 11 (Prevoznik Plaintiffs Exhibit
 12 P57 marked for identification.)
 13 QUESTIONS BY MS. SINGER:
 14 Q. All right. Let's go to the
 15 letter. Exhibit 57.
 16 This is a letter from the
 17 DEA -- I'm sorry, from the Department of
 18 Justice to the Honorable Dan A. Polster dated
 19 January 30, 2018.
 20 Have you seen this letter?
 21 A. Yes.
 22 Q. Okay. And it's signed by
 23 Demetra Ashley --
 24 A. Yes.
 25 Q. -- is that correct?

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1 manufacturers and distributors substantial
 2 competitive harm."
 3 Have I read that correctly?
 4 A. Yes.
 5 Q. Okay. And it goes on to say,
 6 "In Freedom of Information Act litigation,
 7 registrants have articulated the competitive
 8 harm that would result from the release of
 9 this information in several ways. For
 10 example, registrants have expressed concern
 11 that ARCOS information, if made publicly
 12 available, could be used by competitors to
 13 determine market share and sales trends in
 14 specific areas and would enable competitors
 15 to target existing customers and attempt to
 16 take away business. For" --
 17 So have I read all of that
 18 correctly?
 19 A. Yes.
 20 Q. "For this reason, registrants
 21 have repeatedly asserted that they rely on
 22 DEA to protect the confidential business
 23 information that they report to DEA through
 24 ARCOS."
 25 Have I read that correctly?

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1 A. Yes.
 2 Q. And is it the DEA's experience
 3 that registrants have objected to sharing
 4 ARCOS data with their competitors?
 5 A. Yes.
 6 MR. EPPICH: Object to form and
 7 foundation.
 8 QUESTIONS BY MS. SINGER:
 9 Q. All right. You can put that
 10 aside.
 11 So all registrants have the
 12 same duty to maintain effective controls to
 13 protect diversion and to detect, report and
 14 stop shipment of suspicious orders; is that
 15 correct?
 16 MR. EPPICH: Objection. Calls
 17 for a legal conclusion.
 18 MS. FUMERTON: Objection.
 19 Form.
 20 THE WITNESS: Yes.
 21 QUESTIONS BY MS. SINGER:
 22 Q. And I think you testified
 23 before that the obligation depends on where
 24 you sit in the supply chain.
 25 Do you remember that?

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1 diversion you can see from where you sit,
 2 correct?
 3 MR. EPPICH: Objection to form.
 4 Calls for a legal conclusion. Vague.
 5 THE WITNESS: Yes.
 6 QUESTIONS BY MS. SINGER:
 7 Q. And if a registrant has
 8 information that would alert it to diversion,
 9 it has an obligation under the Controlled
 10 Substances Act to use that information to
 11 prevent diversion, correct?
 12 MR. EPPICH: Object to form.
 13 Calls for a legal conclusion. Vague.
 14 THE WITNESS: Correct.
 15 QUESTIONS BY MS. SINGER:
 16 Q. And you can't be like that
 17 monkey, hiding your eyes --
 18 MR. EPPICH: Objection.
 19 QUESTIONS BY MS. SINGER:
 20 Q. -- and say, "We only use that
 21 data for marketing" --
 22 MR. EPPICH: Objection.
 23 QUESTIONS BY MS. SINGER:
 24 Q. -- "or accounting."
 25 You have to use that data for

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1 MR. EPPICH: Objection.
 2 THE WITNESS: You mean in terms
 3 of --
 4 QUESTIONS BY MS. SINGER:
 5 Q. Let me put it a different way
 6 rather than focusing on what you testified
 7 to.
 8 Is it true that your
 9 obligations are the same, but what you may
 10 observe and have data on depends on where you
 11 are in the supply chain, correct?
 12 MR. EPPICH: Object to the
 13 form. Vague.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MS. SINGER:
 16 Q. So you have the same
 17 obligation -- or a registrant has the same
 18 obligation to report and prevent diversion,
 19 regardless of where they are in the supply
 20 chain, correct?
 21 MR. EPPICH: Object to the
 22 form. Calls for a legal conclusion.
 23 THE WITNESS: Correct.
 24 QUESTIONS BY MS. SINGER:
 25 Q. And the difference is what

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1 compliance, too, correct?
 2 MR. EPPICH: Objection.
 3 THE WITNESS: Yes.
 4 QUESTIONS BY MS. SINGER:
 5 Q. Before manufacturers sell
 6 opioids to a distributor, that manufacturer
 7 must make sure that the distributor has an
 8 adequate and effective suspicious order
 9 monitoring program, correct?
 10 MR. O'CONNOR: Objection.
 11 Form. Foundation.
 12 THE WITNESS: Yes.
 13 QUESTIONS BY MS. SINGER:
 14 Q. And that would include doing a
 15 site visit of the distributor, correct?
 16 MR. O'CONNOR: Objection.
 17 Form.
 18 THE WITNESS: Yes.
 19 QUESTIONS BY MS. SINGER:
 20 Q. And examining its suspicious
 21 order monitoring program, correct?
 22 A. Yes.
 23 Q. And if a manufacturer sees
 24 evidence that a distributor is shipping and
 25 failing to report suspicious orders, that

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1 should suggest to the manufacturer that the
 2 distributor does not have effective controls,
 3 correct?
 4 MR. O'CONNOR: Objection.
 5 Form.
 6 MS. MACKAY: Incomplete
 7 hypothetical.
 8 THE WITNESS: Correct.
 9 QUESTIONS BY MS. SINGER:
 10 Q. And if the information a
 11 manufacturer has available to them points to
 12 diversion by prescribers, by pharmacies, a
 13 manufacturer has an obligation to notify DEA
 14 of those prescribers and pharmacies, correct?
 15 MR. O'CONNOR: Objection.
 16 Form. Incomplete hypothetical.
 17 THE WITNESS: Yes.
 18 QUESTIONS BY MS. SINGER:
 19 Q. And does a manufacturer comply
 20 with its obligations to report suspicious --
 21 I'm sorry.
 22 Does a manufacturer comply with
 23 the Controlled Substances Act when it reports
 24 that potential diversion to its distributor
 25 but not the DEA?

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1 P58 marked for identification.)
 2 QUESTIONS BY MS. SINGER:
 3 Q. Exhibit 58. It is
 4 DEA_Rannazzisi, a lot of zeros, 6060. It's
 5 titled "Declaration of Michael Arpaio."
 6 Do you recognize this document?
 7 A. No.
 8 Q. Okay. Do you know who Michael
 9 Arpaio is?
 10 A. Yes.
 11 Q. And who is that?
 12 A. He is a former DEA diversion
 13 investigator.
 14 Q. Okay. And if you turn to
 15 page 2, backside. Now -- I'm sorry, go back
 16 to the first page, the caption.
 17 Can you read the caption for
 18 this, in the matter of Cardinal Health?
 19 A. Cardinal Health.
 20 Q. Okay. I'm sorry, now read
 21 paragraph 5, if you would, please.
 22 A. "I told Mr." --
 23 Is it Moni?
 24 Q. Yes.
 25 A. "I told Mr. Moni that due

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1 MR. O'CONNOR: Objection.
 2 Form.
 3 THE WITNESS: I'm sorry, can
 4 you run --
 5 QUESTIONS BY MS. SINGER:
 6 Q. So if the manufacturer only
 7 tells its distributor and not the DEA, have
 8 they satisfied their obligation under the
 9 Controlled Substances Act?
 10 MR. O'CONNOR: Objection.
 11 Form.
 12 MR. FINKELSTEIN: Incomplete
 13 hypothetical.
 14 THE WITNESS: No.
 15 QUESTIONS BY MS. SINGER:
 16 Q. Are distributors -- and I'm
 17 sorry. Mr. Farrell asked you these questions
 18 about chain pharmacies and whether there are
 19 different compliance obligations for chain
 20 pharmacies.
 21 Do you remember that?
 22 A. Yes.
 23 Q. And I just want to show you one
 24 document.
 25 (Prevoznik Plaintiff's Exhibit

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1 diligence investigations must be performed on
 2 all customers."
 3 Q. And if you go back for one
 4 second, if you read the top line of
 5 paragraph 4, it may explain who Mr. Moni is.
 6 A. "Consequently, on July 29,
 7 2009, I spoke via teleconference to Mike
 8 Moni, quality and regulatory affairs vice
 9 president, anti-diversion and supply chain
 10 services, who is headquartered in Cardinal
 11 Health's Dublin, Ohio, facility but at the
 12 time was in Washington, DC."
 13 Q. Okay. You can stop there.
 14 And I'm sorry, if you can pick
 15 up where you were in paragraph 5.
 16 A. Just start --
 17 Q. Just start from the beginning
 18 on paragraph 5.
 19 A. "I told Mr. Moni that due
 20 diligence investigations must be performed on
 21 all customers, chain pharmacies included,
 22 when it appears that suspicious high volume
 23 orders of controlled substances are
 24 requested, and questionnaires should be sent
 25 to those -- to these chains.

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1 "Mr. Moni, in turn, stated that
 2 QRA is unable to look at chain pharmacy
 3 systems in order to identify problem areas
 4 when there is not an order of interest or
 5 their threshold is not exceeded. I repeated
 6 the chain store due diligence reviews must
 7 not be treated any differently than
 8 independent retail pharmacy customers."
 9 Q. In that last sentence that
 10 "chain store due diligence reviews must not
 11 be treated any differently than independent
 12 retail pharmacy customers," does that
 13 represent the view of the DEA?
 14 A. Yes.
 15 MS. MAINIGI: Objection. Form.
 16 QUESTIONS BY MS. SINGER:
 17 Q. And that is the guidance that
 18 DEA gave to registrants, correct?
 19 MS. MAINIGI: Objection to
 20 form. Objection. Outside the scope
 21 of the Touhy authorization.
 22 Objection.
 23 MR. EPPICH: Objection to the
 24 prior question.
 25 MS. MAINIGI: Objection to the

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1 QUESTIONS BY MS. SINGER:
 2 Q. And distributors may not know
 3 all of the pills that are going into an area,
 4 but they certainly know what pills they're
 5 sending, correct?
 6 MR. EPPICH: Objection to the
 7 form. Calls for a legal conclusion.
 8 MS. MAINIGI: No foundation.
 9 Outside the scope of the Touhy
 10 authorization.
 11 THE WITNESS: Correct.
 12 QUESTIONS BY MS. SINGER:
 13 Q. Are orders that are below a
 14 threshold set by a distributor sometimes
 15 suspicious, too?
 16 MR. EPPICH: Objection. Calls
 17 for a legal conclusion. Form. Vague.
 18 THE WITNESS: Yes, they can be.
 19 QUESTIONS BY MS. SINGER:
 20 Q. And should registrants be
 21 reporting orders that are within threshold
 22 but are still suspicious for other reasons?
 23 MR. EPPICH: Objection to form.
 24 Calls for a legal conclusion. Scope.
 25 THE WITNESS: Yes.

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1 prior question and there also to this
 2 current question.
 3 QUESTIONS BY MS. SINGER:
 4 Q. Go ahead.
 5 That's the guidance that DEA
 6 gave to registrants?
 7 A. Correct.
 8 Q. All right. Should distributors
 9 be looking at all of the volume of opioids
 10 they supply into a geographic area in
 11 determining whether orders may be suspicious?
 12 MR. EPPICH: Object to the
 13 form. Foundation. Vague. Calls for
 14 a legal conclusion.
 15 THE WITNESS: It would
 16 definitely help.
 17 QUESTIONS BY MS. SINGER:
 18 Q. Okay. Meaning if they're
 19 supplying in ways that are very
 20 disproportionate to the population, that
 21 should be a sign that they're not supplying
 22 to a legitimate market, correct?
 23 MR. EPPICH: Objection to the
 24 form. Calls for a legal conclusion.
 25 THE WITNESS: Correct.

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1 QUESTIONS BY MS. SINGER:
 2 Q. If an order exceeds a threshold
 3 set by a registrant, is it no longer
 4 suspicious if the registrant cuts the order
 5 to threshold and ships it anyway?
 6 MR. EPPICH: Objection. Form.
 7 Incomplete hypothetical. Calls for a
 8 legal conclusion. Vague.
 9 MS. MAINIGI: Outside the scope
 10 of the Touhy authorization.
 11 MR. FINKELSTEIN: Incomplete
 12 hypothetical.
 13 THE WITNESS: Could you repeat
 14 it?
 15 QUESTIONS BY MS. SINGER:
 16 Q. Yes. Let me do it as an
 17 example.
 18 If the threshold says that an
 19 order of 10,000 dosage units exceeds
 20 threshold and a customer orders 50,000 dosage
 21 units, can the distributor just cut the order
 22 to 10,000 units and ship it without
 23 investigating whether it's suspicious or not?
 24 MR. EPPICH: Objection. Form.
 25 Incomplete hypothetical. Calls for a

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1 legal conclusion and vague.
 2 THE WITNESS: Well, in your
 3 hypothetical it sounded like it was
 4 already triggered as a suspicious
 5 order, so immediately upon discovery
 6 they were supposed to tell us anyway
 7 that this happened.
 8 QUESTIONS BY MS. SINGER:
 9 Q. And shipping less of it doesn't
 10 make it not suspicious anymore. If it's a
 11 suspicious order, it's a suspicious order,
 12 correct?
 13 MR. EPPICH: Objection to form.
 14 Calls for a legal conclusion.
 15 THE WITNESS: Right. So they
 16 can either not ship it or they can
 17 investigate to determine -- to
 18 alleviate the suspicions that they
 19 have.
 20 QUESTIONS BY MS. SINGER:
 21 Q. Okay. Let's go to...
 22 (Prevoznik Plaintiff's Exhibit
 23 P59 marked for identification.)
 24 QUESTIONS BY MS. SINGER:
 25 Q. Okay. This is exhibit -- can

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1 QUESTIONS BY MS. SINGER:
 2 Q. And turning the page, I believe
 3 you were asked to read the last sentence of
 4 the middle paragraph, "The DEA needs every
 5 tool."
 6 Can you just read the first
 7 part of that paragraph, too, so we have a
 8 complete record and not just an
 9 out-of-context sentence?
 10 MR. EPPICH: Object to that
 11 commentary.
 12 THE WITNESS: "The DEA needs
 13 every tool it can to combat the opioid
 14 crisis. DEA supports changing the
 15 Ensuring Patient Access and Effective
 16 Drug Enforcement Act to allow DEA to
 17 more effectively stop bad actors from
 18 engaging in opioid diversion. We are
 19 dealing with very dangerous drugs that
 20 can result in addiction and even
 21 death."
 22 QUESTIONS BY MS. SINGER:
 23 Q. Okay. I think that completes
 24 the record. You read the last sentence
 25 previously.

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1 you see the number, Mr. Prevoznik? I forgot
 2 to check it.
 3 A. 59.
 4 Q. Okay. And do you recognize
 5 this as the testimony of Demetra Ashley from
 6 the Office of Diversion Control at DEA?
 7 A. Yes.
 8 Q. I believe it was an exhibit in
 9 the first two days of your deposition.
 10 A. Yes.
 11 Q. All right. And it's dated
 12 December 12, 2017, correct?
 13 A. Correct.
 14 Q. Okay. So I believe that
 15 Cardinal's counsel read you some of this, and
 16 I just want to complete the record on it.
 17 So, first, if you could turn to
 18 page 7.
 19 Under the title "Ensuring
 20 Patient Access and Effective Drug Enforcement
 21 Act," first sentence, "The United States is
 22 currently facing an opioid epidemic."
 23 Is that the view of the DEA?
 24 A. Yes.
 25 MR. EPPICH: Objection to form.

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1 All right. Let's now go to
 2 the...
 3 MR. FINKELSTEIN: I'm going to
 4 ask for our lunch break in a minute.
 5 MS. SINGER: Okay. I'm just
 6 about done.
 7 (Prevoznik Plaintiff's Exhibit
 8 P60 marked for identification.)
 9 QUESTIONS BY MS. SINGER:
 10 Q. Okay. Exhibit 60.
 11 And this is
 12 DEA_Rannazzisi_00003482. And that title page
 13 is "Prescription Opioids to Heroin: A
 14 Natural Progression, June 14, 2014, Joseph
 15 Rannazzisi."
 16 Do you recognize this document?
 17 A. Yes.
 18 Q. And what do you recognize it
 19 as?
 20 A. Mr. Rannazzisi's presentation.
 21 Q. Okay. And that was an official
 22 DEA presentation, correct?
 23 A. Correct.
 24 Q. Okay. And there aren't slide
 25 numbers.

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1 Do we have that tabbed?
 2 If you could go to the second
 3 tab, please, which is titled "Migration of
 4 Pain Clinics."
 5 Are you at that page with a
 6 map?
 7 A. Yes.
 8 Q. Okay. Can you explain what
 9 this map represents in terms of DEA's
 10 enforcement?
 11 MR. O'CONNOR: Objection.
 12 Foundation.
 13 MS. MAINIGI: Outside the scope
 14 of the Touhy authorization.
 15 MR. FINKELSTEIN: You can
 16 answer this question, but this will be
 17 the last question before our lunch
 18 break.
 19 THE WITNESS: Okay.
 20 What this means is after we
 21 took the enforcement actions we did in
 22 Florida, this was what the pain -- the
 23 bad pain clinics did, the rogue pain
 24 clinics did, was they went -- moved --
 25 as you can see the directions they

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1 AmerisourceBergen in this litigation.
 2 Before we begin, I do want to
 3 sincerely thank you for your patience over
 4 last two and a half days. I know it's been a
 5 lot, and it is appreciated.
 6 I want to start my questioning
 7 with the testimony you provided relating to
 8 after-the-fact reporting of suspicious
 9 orders.
 10 Okay?
 11 A. Uh-huh.
 12 Q. All right. And when we're
 13 talking about after-the-fact reporting of
 14 suspicious orders, what we are talking about
 15 is registrants who report suspicious -- who
 16 ship suspicious orders after they've been
 17 reported to DEA, correct?
 18 A. After they reported it?
 19 Q. Yes.
 20 After-the-fact reporting is
 21 when the suspicious order has been shipped
 22 and then reported to DEA; is that correct?
 23 A. Those were excessive purchases.
 24 Q. Okay.
 25 A. So it was after-the-fact sales.

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1 moved into. They moved into states
 2 that had weak laws governing pain
 3 clinics. So this was the movement of
 4 the rogue pain clinics from Florida
 5 out.
 6 QUESTIONS BY MS. SINGER:
 7 Q. Okay. And this reflects DEA's
 8 experience that when you take enforcement
 9 action someplace, the diversion can move into
 10 other areas, correct?
 11 A. Correct.
 12 MS. MAINIGI: Objection.
 13 Outside the scope. Vague.
 14 VIDEOGRAPHER: Okay. We're
 15 going off the record. The time is
 16 12:46.
 17 (Off the record at 12:46 p.m.)
 18 VIDEOGRAPHER: We're going back
 19 on the record. Beginning of Media
 20 File 5. The time is 1:37.
 21 EXAMINATION
 22 QUESTIONS BY MR. MAHADY:
 23 Q. Mr. Prevoznik, good afternoon.
 24 My name is Joe Mahady. I, along with my
 25 colleague, Robert Nicholas, are counsel for

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1 Q. Okay. And my understanding of
 2 your testimony is that the DEA has always
 3 interpreted orders to mean prior to shipment;
 4 is that correct?
 5 A. Correct.
 6 Q. All right. And that the DEA
 7 has consistently provided the guidance --
 8 that guidance to registrants, correct?
 9 A. Correct.
 10 Q. All right. And that the DEA
 11 has never told registrants that
 12 after-the-fact reporting is compliant with
 13 federal law; is that correct?
 14 A. Well, the use of the term -- of
 15 the absolute "never," there might be an
 16 employee that did, but DEA policy has always
 17 been --
 18 Q. Okay. So nobody from DEA
 19 headquarters has ever told a registrant, to
 20 your knowledge, that after-the-fact reporting
 21 is compliant with federal law, correct?
 22 A. Well, again, you started it
 23 with the "never" -- did somebody at DEA
 24 headquarters ever do it. So I'm -- I can't
 25 say that somebody didn't say something, but I

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1 can say DEA policy is that they should not.
 2 Q. Okay. I appreciate that.
 3 And I believe you testified
 4 that the DEA has consistently advised
 5 registrants that they should not ship an
 6 order that they report as suspicious; is that
 7 correct?
 8 A. Correct.
 9 Q. And when you say
 10 "consistently," you were referring to the
 11 time period from 1971 when the Controlled
 12 Substances Act was passed until present day;
 13 is that right?
 14 A. Yes.
 15 Q. So approximately a 50-year
 16 period. Your testimony is that the DEA
 17 guidance on that point has been consistent,
 18 correct?
 19 A. Correct.
 20 Q. All right. You joined the DEA
 21 in 1991, correct?
 22 A. Yes.
 23 Q. In my home city of
 24 Philadelphia?
 25 A. Yes.

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1 regulations that haven't changed since then.
 2 Q. Okay.
 3 A. So that's what I relied on.
 4 Q. So you relied -- for the period
 5 from 1971 to 1991, you relied entirely on the
 6 statute and the regulation, correct?
 7 MR. FINKELSTEIN: Objection.
 8 Argumentative. Mischaracterizes prior
 9 testimony.
 10 THE WITNESS: No, because we
 11 went through some of the letters that
 12 I had seen in the 1980s in which those
 13 topics were discussed in there.
 14 But I also know that Burles
 15 Vulcom [phonetic], there was a press
 16 release that they had to pay a heavy
 17 fine back in the 19 -- mid-1980s
 18 because they weren't reporting
 19 suspicious orders.
 20 So I was reviewing documents
 21 that would show what was DEA's
 22 position and what did we say. So I
 23 was looking at correspondence, any
 24 correspondence, I could find in the
 25 1980s, 1990s, anything that showed

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1 Q. Okay.
 2 A. Where you from?
 3 Q. Philadelphia.
 4 Where?
 5 A. Yeah.
 6 Q. Well, now I'm in the 'burbs.
 7 We had to move. But I was in city.
 8 So -- and you joined
 9 headquarters in 2012, correct?
 10 A. Yes.
 11 Q. Okay. So I want to understand
 12 a little bit better how you can testify that
 13 the guidance was consistent for that entire
 14 50-year period.
 15 Okay?
 16 A. Sure.
 17 Q. Okay. So in preparing for your
 18 deposition as the representative from the
 19 DEA, who did you speak with that -- well, let
 20 me back up.
 21 You don't have any firsthand
 22 knowledge of the guidance that the DEA
 23 offered from 1971 until you joined the DEA in
 24 1991, correct?
 25 A. I have the statute and the

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1 that consistent -- what did we say,
 2 what was our policy.
 3 QUESTIONS BY MR. MAHADY:
 4 Q. Okay. And what did we say
 5 regarding the guidance relating to reporting
 6 a suspicious order and then shipping it.
 7 That's what we're talking about specifically,
 8 right?
 9 A. Right.
 10 Q. Okay. Did you speak with
 11 anyone at the -- in preparation for your
 12 30(b)(6), did you speak with anyone at the
 13 DEA who was knowledgeable about the guidance
 14 offered by the DEA on that issue from 1971 to
 15 1980?
 16 MR. FINKELSTEIN: I'm going to
 17 object and note for the record that
 18 the witness had a prep sheet which was
 19 to stay with his prep materials that
 20 has not been provided to him today.
 21 MR. MAHADY: Okay. And that
 22 was a prep sheet that the Department
 23 of Justice brought with them last
 24 time, so it's not a document that we
 25 were to bring. So --

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1 MR. FINKELSTEIN: No, it was a
 2 document that was marked as an
 3 exhibit, provided to everyone and kept
 4 with the witness himself, kept with
 5 the court reporter, so he could rely
 6 on them.
 7 MR. MAHADY: Okay.
 8 MR. FINKELSTEIN: This
 9 specifically listed his prep.
 10 MR. MAHADY: Okay. That's
 11 fine.
 12 MR. FINKELSTEIN: And so now
 13 he's going on memory, where we
 14 specifically prepared an exhibit for
 15 you.
 16 MR. MAHADY: I appreciate that.
 17 MS. MAINIG: We'll try to find
 18 it. I think the exhibits went with
 19 the prior court reporter, so I think
 20 that's what happened.
 21 MR. MAHADY: Okay.
 22 QUESTIONS BY MR. MAHADY:
 23 Q. In preparation for your
 24 30(b)(6), you did not speak with Michael
 25 Mapes, correct?

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1 18 and went to 20.
 2 QUESTIONS BY MR. MAHADY:
 3 Q. Okay. And in preparing for
 4 your deposition as a 30(b)(6) on behalf of
 5 the DEA, how many representatives from field
 6 offices did you speak with?
 7 A. Probably about 10 to 12.
 8 Q. Okay.
 9 A. Sort of off the top of my head.
 10 Q. And how many of those
 11 individuals worked at field offices in the
 12 1990s?
 13 A. Worked in the field offices?
 14 Q. Correct.
 15 A. Eight to ten of them.
 16 Q. Okay. Mr. Prevoznik, are you
 17 aware that the DEA has, in fact, approved a
 18 suspicious order monitoring system where
 19 suspicious orders were to be reported after
 20 the purchase was complete?
 21 A. No.
 22 Q. Okay. Would it surprise you
 23 that the DEA has approved a suspicious order
 24 monitoring system where suspicious orders
 25 were to be reported after the purchase has

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1 A. No.
 2 Q. And you did not speak with Kyle
 3 Wright, correct?
 4 A. No.
 5 Q. There was a reference to a Tom
 6 Gitchel earlier today; is that right?
 7 A. Tom Gitchel, yes.
 8 Q. And who is Tom Gitchel?
 9 A. Tom Gitchel was a senior
 10 manager within the diversion program at DEA.
 11 Q. Okay. And did you speak with
 12 Tom Gitchel in preparation for providing
 13 testimony on behalf of the DEA?
 14 A. No.
 15 Q. Okay. How about Patricia Good?
 16 Did you speak with Patricia Good?
 17 A. No.
 18 Q. How many field offices does the
 19 DEA have?
 20 A. Currently we have 23.
 21 Q. Okay. And do you know how many
 22 field offices the DEA had in the 1990s?
 23 MR. FINKELSTEIN: Objection.
 24 Scope.
 25 THE WITNESS: I believe it was

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1 been complete?
 2 MR. FINKELSTEIN: Object to
 3 form.
 4 THE WITNESS: Yeah.
 5 (Prevoznik Exhibit 22 marked
 6 for identification.)
 7 QUESTIONS BY MR. MAHADY:
 8 Q. Okay. I'm going to mark this
 9 as Prevoznik 22.
 10 Mr. Prevoznik, let me know when
 11 you've had a chance to read this.
 12 A. Okay.
 13 Q. Okay.
 14 MR. FARRELL: Before you do so,
 15 I'm going to place an objection on the
 16 record. This is correspondence dated
 17 1998 between Bergen Brunswick
 18 Corporation and the DEA, and the scope
 19 of this document violates CMO 2, where
 20 the defendants requested and the Court
 21 granted a limitation with temporal
 22 scope of discovery to 2006.
 23 MR. MAHADY: This document was
 24 produced to the DEA, was identified as
 25 a document that Mr. Prevoznik reviewed

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1 in preparing for his corporate
 2 designee deposition today.
 3 I will also note that the
 4 plaintiffs spent a majority of their
 5 questioning on issues that predate
 6 2007, including using documentation
 7 that was between DEA and other
 8 registrants that was pre-2007.
 9 SPECIAL MASTER COHEN: Just to
 10 clarify, you said produced to the DEA.
 11 Did you mean by the DEA?
 12 MR. MAHADY: From the DEA.
 13 QUESTIONS BY MR. MAHADY:
 14 Q. Mr. Prevoznik, this morning
 15 Mr. Farrell asked you questions about
 16 documents that bear a US DEA Bates number,
 17 correct?
 18 A. Yes.
 19 Q. All right. And those are
 20 documents that the DEA has produced, correct?
 21 A. Correct.
 22 Q. Okay. And these were documents
 23 that were in the custody and control of the
 24 DEA, correct?
 25 A. Yes.

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1 record. It was Wednesday of this week
 2 we received it.
 3 MS. MAINIGI: Actually, it was
 4 hand-delivered to Williams on Tuesday.
 5 MR. MAHADY: Well, the point
 6 isn't Tuesday or Wednesday, it's
 7 that --
 8 MR. FINKELSTEIN: No, it was
 9 hand-delivered. So you knew you had
 10 represented previously that it was
 11 Federal Express'd, but it wasn't.
 12 MR. MAHADY: Okay. Well,
 13 the -- I would just like to --
 14 MS. MAINIGI: That's what I
 15 understood.
 16 MR. FINKELSTEIN: And you were
 17 wrong.
 18 MR. MAHADY: -- note for the
 19 record that this document was reviewed
 20 by the witness in advance of the first
 21 two days of his deposition and was
 22 produced a month after the fact.
 23 MR. FINKELSTEIN: And now you
 24 have it. Go ahead and ask questions
 25 about it.

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1 Q. Okay. Have you seen this
 2 document before?
 3 A. Yes.
 4 Q. When was the first time you saw
 5 this document?
 6 A. It was during my prep. I don't
 7 have a specific date.
 8 Q. Did you see -- so you've been
 9 deposed on three separate days, correct?
 10 A. Yes.
 11 Q. And the first two days of your
 12 deposition were, I believe, April 17th and
 13 April 18th.
 14 Did you see this document
 15 before you were deposed on April 17th and
 16 April 18th?
 17 A. Yes.
 18 Q. Okay. Are you aware that the
 19 Department of Justice did not produce this
 20 document until Tuesday of this week?
 21 A. No.
 22 Q. Okay.
 23 MS. MAINIGI: I believe it got
 24 to us Wednesday.
 25 MR. MAHADY: Correction for the

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1 MR. MAHADY: I will. Thank
 2 you.
 3 MR. FINKELSTEIN: You're
 4 welcome.
 5 QUESTIONS BY MR. MAHADY:
 6 Q. Mr. Prevoznik, can you please
 7 direct your attention to the bottom of this
 8 document?
 9 A. Yes.
 10 Q. And before we get there, I'm
 11 sorry, this document is dated what?
 12 A. July 23, 1998.
 13 Q. And this document was sent to,
 14 while the name is redacted, the regulatory
 15 compliance and security services of Bergen
 16 Brunswick Corporation; is that correct?
 17 A. Correct.
 18 Q. And it's signed, or stamped, by
 19 Patricia M. Good, chief liaison and policy
 20 section; is that right?
 21 A. Yes.
 22 Q. Okay. Can you direct your
 23 attention to the bottom of the page below the
 24 section that has been redacted, and can you
 25 please read for me the subject line?

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1 A. "Approved suspicious order
 2 monitoring system."
 3 Q. Okay. Now, if you can please
 4 read to me for the record the first sentence
 5 of the letter after "dear."
 6 A. "This is to grant approval of
 7 your request to implement on a nationwide
 8 basis your newly developed system to identify
 9 and report suspicious orders for controlled
 10 substances and regulated chemicals."
 11 Q. Okay. Can you -- so as
 12 required by the federal regulations, correct?
 13 A. Oh, I'm sorry, yes.
 14 Q. Okay. Can you read the next
 15 sentence, please?
 16 A. "DEA managers who have been
 17 involved with the testing of the system have
 18 relied -- have relayed their positive
 19 opinions regarding its ability to provide
 20 information in a fashion which is not only
 21 useful overall but is also responsive to the
 22 needs of individual DEA offices."
 23 Q. Okay. And we can agree that
 24 this is an explicit approval from the DEA of
 25 a particular system, correct?

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1 monitoring system," the position of the DEA
 2 is that this was not an approval of the
 3 system; is that correct?
 4 MR. FINKELSTEIN: Objection.
 5 Argumentative. Asked and answered.
 6 You can answer again.
 7 THE WITNESS: Can you please
 8 repeat it?
 9 QUESTIONS BY MR. MAHADY:
 10 Q. Notwithstanding the fact that
 11 the subject line of this letter is "approve
 12 suspicious order monitoring system," it is
 13 the position of the DEA here today, 20-some
 14 years later, that this was not an approval of
 15 the actual program itself; is that correct?
 16 MR. FINKELSTEIN: Same
 17 objections.
 18 THE WITNESS: Yeah, that's not
 19 what the letter says. The letter says
 20 we approve your request to implement
 21 your system on a nationwide basis.
 22 Your system, Bergen Brunswick system.
 23 QUESTIONS BY MR. MAHADY:
 24 Q. And do you know if that system
 25 was developed in coordination with the DEA?

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1 MR. FINKELSTEIN: Objection.
 2 Mischaracterizes the document.
 3 THE WITNESS: No, it's a --
 4 it's a granting -- they asked could
 5 they implement this on a nationwide --
 6 their newly designed system. So it's
 7 this particular registrant, Bergen
 8 Brunswick, who developed their own
 9 system and asked can we -- can we
 10 apply this nationwide.
 11 And we said, yes, you may apply
 12 it nationwide.
 13 QUESTIONS BY MR. MAHADY:
 14 Q. Okay. So --
 15 A. It's not approving the system.
 16 MR. FINKELSTEIN: Let the
 17 witness finish his answer.
 18 MR. MAHADY: I appreciate that.
 19 THE WITNESS: It's just
 20 approving the fact that they can now
 21 put it nationwide.
 22 QUESTIONS BY MR. MAHADY:
 23 Q. Okay. So notwithstanding the
 24 fact that the subject line of the letter is,
 25 "Subject: Approve suspicious order

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1 A. Well, it appears that we had
 2 some input into it, so it's no different than
 3 when I previously testified that you have --
 4 the regulations require the registrant to
 5 design. So this is designing it.
 6 So when -- as I said earlier
 7 today, when we go in to listen to the design
 8 or what is the system that you're going to
 9 implement, DEA is in listening mode, we will
 10 make suggestions.
 11 If we -- as we listen to it, we
 12 will make suggestions: Oh, you may want to
 13 think of this; you may want to think of that.
 14 Q. Okay.
 15 A. So then it jumps to the
 16 operational side. So you now have the
 17 design, but now you have to operate it. So
 18 what is the operation, what was actually --
 19 how did the system operate.
 20 And that is the registrant
 21 running that system, not DEA.
 22 Q. Okay. So the DEA approved the
 23 design of the system but not the operation;
 24 is that what you're saying?
 25 MR. FINKELSTEIN: Objection.

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1 Mischaracterizes his prior testimony.
 2 THE WITNESS: No, we said we
 3 approve the request to implement the
 4 system nationwide.
 5 QUESTIONS BY MR. MAHADY:
 6 Q. Okay. So in the eyes of DEA,
 7 there's a distinction between approving the
 8 system and approving the nationwide
 9 implementation of a system.
 10 Do I understand you correctly?
 11 A. Well, I understand the request
 12 seems to be that they asked, "Can we put this
 13 nationwide?" and we said, "Yes, go ahead."
 14 (Prevoznik Exhibit 23 marked
 15 for identification.)
 16 QUESTIONS BY MR. MAHADY:
 17 Q. Okay. I'm going to mark the
 18 next document as Prevoznik 23.
 19 MR. FINKELSTEIN: Do you have a
 20 copy for me?
 21 MR. MAHADY: I do.
 22 MR. FINKELSTEIN: Wait till I
 23 get my copy before you answer
 24 questions.
 25 THE WITNESS: Sure.

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1 no response.
 2 So I'm going to ask you to
 3 instruct Mr. Farrell, who is trying to
 4 slow down and impede the questioning,
 5 that he not continue to raise this
 6 same issue with every document that's
 7 introduced.
 8 MR. FINKELSTEIN: I'll note
 9 that we let them ask and we're letting
 10 you ask, but it appears that you all
 11 had a copy of what you were
 12 complaining you didn't receive a copy
 13 of for a long time, so...
 14 MR. MAHADY: And I'll represent
 15 to the Department of Justice that the
 16 copy that the Department of Justice
 17 produced is different in a material
 18 way than the copy that was in the
 19 possession of AmerisourceBergen.
 20 QUESTIONS BY MR. MAHADY:
 21 Q. Mr. Prevoznik, are you ready?
 22 A. Yes.
 23 Q. Okay.
 24 MR. FARRELL: Hold on. Am I
 25 being instructed not to lodge

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1 MR. FARRELL: Again, for the
 2 record, I'm going to place an
 3 objection. This is not a document
 4 produced by the DEA. This is a
 5 document bearing the ABDC Bates number
 6 in the bottom right-hand corner, a
 7 document dated 1996.
 8 The defendants argued for and
 9 received an order preventing the
 10 plaintiffs from conducting discovery
 11 on DEA communications with the
 12 wholesalers prior to 2006, and yet now
 13 they're attempting to introduce
 14 selected documents on the very subject
 15 matter.
 16 So we reserve our right to make
 17 a request to the Court to allow us to
 18 reopen discovery in this regard.
 19 MR. MAHADY: Special Master
 20 Cohen, this issue has been addressed
 21 in e-mail correspondence to you this
 22 week. I believe it -- the last
 23 request from you was to plaintiffs
 24 asking that this resolve the issue.
 25 That was over two days ago. There was

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1 objections?
 2 SPECIAL MASTER COHEN: You
 3 certainly can lodge an objection in
 4 the same way that the defense were
 5 objecting to questioning by the
 6 plaintiffs.
 7 What I suggest you do, though,
 8 is find a which to say an objection in
 9 five words or less.
 10 MR. FARRELL: If I can have my
 11 objections preserved for the record,
 12 then I won't need to object at all.
 13 SPECIAL MASTER COHEN: Will you
 14 give him a continuing objection on
 15 that basis?
 16 MR. MAHADY: That's fine.
 17 Can we go off the record?
 18 VIDEOGRAPHER: Going off
 19 record. The time is 1:57.
 20 (Off the record at 1:57 p.m.)
 21 VIDEOGRAPHER: We're going back
 22 on the record.
 23 MR. FINKELSTEIN: Go ahead,
 24 back on the record.
 25 VIDEOGRAPHER: Going back on

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1 the record. Beginning of Media
 2 File 6. Time is 1:58.
 3 MR. FINKELSTEIN: Mr. Mahady,
 4 you had represented that there were
 5 significant differences. Do you want
 6 to explain those? Because I have your
 7 production right here, and the only
 8 difference is it seems that you had an
 9 unredacted version of this document.
 10 MR. MAHADY: Sure,
 11 Mr. Finkelstein. I'd just like to
 12 start first with that it's not the
 13 same document that I just made that
 14 representation relating to. I was
 15 referring to the 1998 letter.
 16 In the copy of the document
 17 that was produced by the Department of
 18 Justice, there are redactions, and
 19 redactions in areas of the document
 20 where there is no text in the version
 21 that was in the possession of
 22 AmerisourceBergen.
 23 I will also note that at the
 24 bottom of the version that was
 25 produced by the Department of Justice,

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1 I think you have three hours to
 2 ask the witness about the redacted
 3 draft.
 4 MR. MAHADY: And I think we're
 5 talking about the document from
 6 September 30, 1996, that's before the
 7 witness.
 8 QUESTIONS BY MR. MAHADY:
 9 Q. Mr. Prevoznik, can you please
 10 read the first paragraph of this letter --
 11 before we get there.
 12 Thomas Gitchel. Thomas Gitchel
 13 is identified as the chief liaison and policy
 14 section of the DEA, correct?
 15 A. Correct.
 16 Q. And he held that position in
 17 1996?
 18 A. Yes.
 19 Q. Now, if a registrant has
 20 questions about the regulation or the DEA's
 21 interpretation of the regulations, those
 22 questions are directed to the liaison and
 23 policy section of the DEA, correct?
 24 A. Correct.
 25 Q. And is the chief the

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1 there is a subject line, a subject,
 2 "approve suspicious order monitoring
 3 system," which is material and
 4 relevant.
 5 I would also like to note for
 6 the record that the version of the
 7 documents that are in possession of
 8 AmerisourceBergen were provided to the
 9 Department of Justice yesterday
 10 afternoon around one o'clock for
 11 purposes of completeness and in
 12 advance of today's deposition, and I
 13 received no response from anyone at
 14 the DOJ.
 15 MR. FINKELSTEIN: So we had
 16 fewer than 24 hours.
 17 But what I'm seeing is two
 18 letters dated July 23, 1998. One is
 19 addressed to Chris Zimmerman; the
 20 other is addressed to a redacted name.
 21 One says, "Dear Mr. Zimmerman," the
 22 other says, "redacted." In every
 23 other respect, apart from the
 24 redactions and the subject, they
 25 appear to be identical.

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1 highest-ranking member of that section?
 2 A. Yes.
 3 Q. Okay. This letter dated
 4 September 30, 1996, to Thomas Gitchel was
 5 sent by Chris Zimmerman of Bergen Brunswick.
 6 Do you know Chris Zimmerman?
 7 A. I know the name.
 8 Q. Okay.
 9 A. I don't know if we've ever met.
 10 Q. Okay. I want to start -- and
 11 I'll actually read the first paragraph for
 12 purposes of time.
 13 "The purposes of this letter is
 14 to introduce the Drug Enforcement
 15 Administration to an innovative new system
 16 under development by Bergen Brunswick Drug
 17 Company to monitor and report customer orders
 18 of controlled substances which fit the
 19 suspicious order criteria outlined in 21 CFR
 20 1301.74(b)."
 21 Did I read that correctly?
 22 A. Yes.
 23 Q. Okay. And that is the section
 24 that we've been discussing today, right?
 25 A. Yes.

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1 Q. Okay. And that's the section
 2 that governs the reporting of suspicious
 3 orders?
 4 A. Yes.
 5 Q. Okay. Beginning with the next
 6 sentence, "By way of background, as you know,
 7 BBDC participated in the development of a
 8 model excessive purchase report now in use by
 9 many distributor registrants."
 10 Were you aware that there was a
 11 model excessive purchase report that was
 12 being used by the registrants?
 13 A. A model? Yes.
 14 Q. Okay. It says, "As used by
 15 BBDC, the excessive purchase report lists
 16 total customer purchases for the reported
 17 month which exceed predetermined multiples of
 18 the average monthly purchase of BBDC's total
 19 customer base."
 20 Did I read that correctly?
 21 A. Yes.
 22 Q. Okay. So in describing the
 23 model excessive purchase report, it refers to
 24 customer purchases, correct?
 25 A. Yes.

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1 telephonic reporting of customer orders to
 2 DEA."
 3 Now, is it your understanding
 4 that DEA users did consider the excess
 5 purchase reports to be a useful law
 6 enforcement tool?
 7 A. Yes.
 8 Q. Okay. And is it your
 9 understanding that distributors like Bergen
 10 Brunswick also placed telephonic report --
 11 also performed telephonic reporting to the
 12 DEA for suspicious orders in the '90s?
 13 A. Yes, that's my understanding.
 14 Q. Okay. And it goes on to say
 15 that "in an average year, BBDC logs over
 16 12,000 telephone calls to DEA field offices
 17 nationwide to quarterly customer orders of
 18 controlled substances which it believes could
 19 fit the suspicious order criteria set forth
 20 in 1301.74(b)."
 21 Did I read that correctly?
 22 A. Yes.
 23 Q. And you have no reason to
 24 dispute the fact stated here that Bergen
 25 Brunswick was placing 12,000 calls to DEA

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1 Q. And a monthly report, correct?
 2 A. Correct.
 3 Q. Okay. And it goes on to say at
 4 the end of that paragraph, "This report is
 5 produced in hard copy form monthly and is
 6 sent via certified mail to each DEA field
 7 office having responsibility for the
 8 reporting BBDC locations."
 9 Did I read that correctly?
 10 A. Yes, you did.
 11 Q. And is that your understanding
 12 of how it worked?
 13 A. Yes.
 14 MR. FINKELSTEIN: Wait. Hang
 15 on. Give me time to object.
 16 THE WITNESS: I'm sorry.
 17 MR. FINKELSTEIN: Objection.
 18 Scope.
 19 QUESTIONS BY MR. MAHADY:
 20 Q. Next paragraph. "While
 21 feedback from DEA users over the years has
 22 generally confirmed our belief that the
 23 report standing alone is a useful law
 24 enforcement tool, BBDC suspicious order
 25 compliance program also involves the

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1 field offices a year, do you?
 2 MR. FINKELSTEIN: Objection.
 3 Scope.
 4 THE WITNESS: No, I don't.
 5 QUESTIONS BY MR. MAHADY:
 6 Q. Okay. And then it goes on to
 7 say that "In nearly every instance, the
 8 telephonic contacts are made to report orders
 9 which later appeared on the month end
 10 excessive reports sent to DEA."
 11 Did I read that correctly?
 12 A. Yes.
 13 Q. Okay. So the orders that were
 14 being reported to the DEA daily,
 15 telephonically, were also being included on
 16 the month-end excessive purchase reports,
 17 correct?
 18 MR. FINKELSTEIN: Objection.
 19 Scope.
 20 THE WITNESS: That's what it
 21 says.
 22 QUESTIONS BY MR. MAHADY:
 23 Q. Okay. Was that your
 24 understanding?
 25 MR. FINKELSTEIN: Scope.

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1 THE WITNESS: Based on this,
 2 yes, that's my understanding.
 3 QUESTIONS BY MR. MAHADY:
 4 Q. Okay. Now, next paragraph,
 5 second sentence, "Some field offices have
 6 insisted that BBDC not telephonically report
 7 suspicious orders at all" --
 8 MR. FINKELSTEIN: Where are
 9 you?
 10 MR. MAHADY: Bottom of the
 11 page.
 12 QUESTIONS BY MR. MAHADY:
 13 Q. -- "but rather to mail or fax
 14 copies of the order documents, 222 forms or
 15 invoices of them instead."
 16 Did I read that correctly?
 17 A. Yes.
 18 Q. Okay. So a DEA field office
 19 could give guidance to registrants about how
 20 they wanted suspicious orders reported,
 21 correct?
 22 MR. FINKELSTEIN: Scope.
 23 THE WITNESS: Yes.
 24 QUESTIONS BY MR. MAHADY:
 25 Q. Okay. And your --

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1 guidance to registrants about the suspicious
 2 order reporting requirements, correct?
 3 MR. FINKELSTEIN: Scope.
 4 THE WITNESS: Yes.
 5 QUESTIONS BY MR. MAHADY:
 6 Q. Okay. And the DEA's
 7 expectation would be that the registrants
 8 listened to the guidance they were receiving
 9 from the field offices, correct?
 10 A. Yes.
 11 Q. Okay. And if a DEA field
 12 office told to -- advised a registrant to
 13 report a suspicious order in one form versus
 14 another, they should listen to that DEA field
 15 office, correct?
 16 A. Yes.
 17 Q. Okay.
 18 A. Yes.
 19 Q. Now, the next sentence there,
 20 it says, "Some offices have diplomatically
 21 attempted to offer guidance as to the types
 22 of orders that their offices would deem
 23 reportable in an effort to limit the number
 24 of telephone contacts."
 25 Did I read that correctly?

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1 MS. MAINIGI: If I could
 2 interrupt, why is that scope?
 3 MR. FINKELSTEIN: Because the
 4 authorization letter is explicit that
 5 he is authorized to testify about
 6 industrywide guidance but not
 7 individual communications to specific
 8 registrants.
 9 MS. MAINIGI: Okay. Well, I
 10 think that's industrywide, but thank
 11 you for that clarification.
 12 MR. FINKELSTEIN: Specific
 13 phone calls to Bergen Brunswig is
 14 industrywide?
 15 MS. MAINIGI: I don't think
 16 that's the scope of the question, but
 17 I'll -- I apologize for interrupting.
 18 I just wanted to know the answer.
 19 MR. FINKELSTEIN: Do you
 20 understand my objection?
 21 THE WITNESS: Yeah.
 22 MR. FINKELSTEIN: Okay.
 23 QUESTIONS BY MR. MAHADY:
 24 Q. So just to go back.
 25 DEA field offices could provide

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1 A. Yes.
 2 Q. Are you aware that some DEA
 3 field offices in the '90s were trying to
 4 limit the number of suspicious orders being
 5 reported telephonically by the registrants?
 6 MR. FINKELSTEIN: Foundation.
 7 Exceeds the scope of the Touhy
 8 authorization.
 9 You can answer in your personal
 10 capacity.
 11 THE WITNESS: I'm not
 12 personally aware of that.
 13 QUESTIONS BY MR. MAHADY:
 14 Q. Okay. But you have no reason
 15 to dispute the accuracy of that statement?
 16 MR. FINKELSTEIN: Scope. Calls
 17 for speculation.
 18 You can answer.
 19 THE WITNESS: I don't.
 20 QUESTIONS BY MR. MAHADY:
 21 Q. Okay. I want to go down to the
 22 middle of the page where it says, "Against
 23 this backdrop."
 24 Do you see it?
 25 A. Yes.

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1 Q. Okay. "Against this backdrop,
 2 BBDC set to work on the development of a
 3 suspicious order reporting system that would
 4 provide better quality information to DEA in
 5 a more efficient manner."
 6 Did I read that correctly?
 7 A. Yes.
 8 Q. And you would agree with me
 9 that that's a laudable goal to have for a
 10 registrant?
 11 A. A lot of what?
 12 Q. That's something that a
 13 registrant should strive to do, is to provide
 14 better quality information to the DEA?
 15 A. Yes.
 16 Q. Okay. Now, I'm going to read
 17 the next paragraph, which describes the plan.
 18 "Our plan involves the creation
 19 of a computer program that compares a
 20 customer's controlled substance orders
 21 expressed in metric units of the active
 22 ingredient against a standard representing an
 23 average of the customer's prior four months
 24 of orders. Customers whose order exceed by a
 25 specified percentage their prior four-month

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1 for speculation.
 2 You can answer.
 3 QUESTIONS BY MR. MAHADY:
 4 Q. "When DEA offices open each
 5 day, the summary report would be waiting for
 6 their review. DEA offices could also elect
 7 to receive a month-end version of this report
 8 via US mail. The summary report would show
 9 the customer name, address, DEA number, item
 10 description, NDC number, order date, active
 11 ingredient volume ordered, active ingredient
 12 shipped and customer allowance, i.e., average
 13 of customer's prior four-month orders."
 14 Did I read that correctly?
 15 A. Yes.
 16 Q. Now, what's contemplated here
 17 in the summary report that would be faxed
 18 daily to the DEA, so the DEA field offices
 19 would have it in the morning, included active
 20 ingredient shipped, correct?
 21 MR. FINKELSTEIN: Scope. Calls
 22 for speculation.
 23 THE WITNESS: It's what it
 24 says.
 25

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1 average order history would be printed on a
 2 summary report."
 3 Did I read that correctly?
 4 A. Yes.
 5 Q. Okay. "BBDC's mainframe
 6 computer in Orange, California, would
 7 automatically fax this report simultaneously
 8 to each respective DEA field office daily in
 9 the early a.m. hours after the distribution
 10 center has completed order processing
 11 activities."
 12 Did I read that correctly?
 13 A. Yes.
 14 Q. Okay. So what's contemplated
 15 here is that BBDC would generate a report at
 16 the end of the night, after it had completed
 17 its order processing for the day, correct?
 18 MR. FINKELSTEIN: Objection.
 19 Scope. Calls for speculation.
 20 THE WITNESS: So they pulled --
 21 so the orders were already pulled and
 22 already ready to ship?
 23 QUESTIONS BY MR. MAHADY:
 24 Q. Yes. Okay.
 25 MR. FINKELSTEIN: Scope. Calls

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1 QUESTIONS BY MR. MAHADY:
 2 Q. Okay.
 3 A. But again, these are all
 4 after-the-fact shipping.
 5 Q. Correct.
 6 So these would be suspicious
 7 orders that were reported to the DEA after
 8 they had already been shipped, right?
 9 A. Right.
 10 MR. FINKELSTEIN: Wait.
 11 THE WITNESS: I'm sorry.
 12 MR. FINKELSTEIN: Calls for
 13 speculation.
 14 QUESTIONS BY MR. MAHADY:
 15 Q. And Bergen Brunswick is seeking
 16 to implement a program that would do just
 17 that, report -- I'm sorry, ship and then
 18 report suspicious orders, right?
 19 MR. FINKELSTEIN: Scope. Calls
 20 for speculation.
 21 THE WITNESS: But in -- as this
 22 morning's testimony, in all these
 23 various communications we have stated
 24 that a suspicious order is prior to
 25 shipment.

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1 QUESTIONS BY MR. MAHADY:
 2 Q. Okay.
 3 A. So you're giving us, again,
 4 after the fact, which does not -- just
 5 because you report it doesn't alleviate that
 6 you maintain effective controls over
 7 diversion.
 8 Q. Okay. But Bergen Brunswick is
 9 specifically saying, "We're going to report
 10 suspicious orders after they had already been
 11 shipped," correct?
 12 MR. FINKELSTEIN: Scope. Calls
 13 for speculation.
 14 You can answer in your personal
 15 capacity.
 16 QUESTIONS BY MR. MAHADY:
 17 Q. That's what they're proposing
 18 to implement. That's all I'm trying to ask
 19 you based off of this document.
 20 A. Right, and --
 21 MR. FINKELSTEIN: You can
 22 answer based on your personal
 23 understanding of what Bergen Brunswick
 24 is proposing to implement.
 25 QUESTIONS BY MR. MAHADY:

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1 question would be the assigned -- assignment
 2 of the percentage value that a customer's
 3 order would have to exceed before that order
 4 would appear on the report."
 5 Did I read that correctly?
 6 A. Yes.
 7 Q. Okay. And then it goes on to
 8 say, "Tom, we are excited about the
 9 opportunity to make constructive changes in
 10 our suspicious order reporting system. By
 11 working in a partnership with your office, we
 12 can perhaps lead the way to developing a new
 13 system that everyone feels good about."
 14 Did I read that correctly?
 15 A. Yes.
 16 Q. Okay. And as the
 17 representative from the DEA, was it your
 18 understanding that Bergen Brunswick in 1996
 19 was trying to work with the DEA as part of a
 20 partnership to develop a system that everyone
 21 could feel good about?
 22 MR. FINKELSTEIN: Scope. Calls
 23 for speculation.
 24 You, Tom Prevoznik, can answer.
 25 THE WITNESS: Yes, that's what

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1 Q. Okay. And your answer was
 2 "right," that's your understanding of what
 3 they're proposing?
 4 A. That's my understanding of it,
 5 yes.
 6 Q. Okay. Next page. "Our intent
 7 is to receive DEA's permission to replace our
 8 current manner of daily suspicious order
 9 reporting with the daily electronic facsimile
 10 report," correct?
 11 A. Yes.
 12 Q. Okay. "We would like to have
 13 DEA input on the final product because DEA
 14 will be the primary users. One suggestion
 15 would be to coordinate with one of your field
 16 offices, perhaps the Los Angeles office, to
 17 meet with our project development team."
 18 Did I read that correctly?
 19 A. Yes.
 20 Q. Okay. It goes on to
 21 say, "While your field office could beta test
 22 the report and provide us with input on
 23 aesthetics and content, there are some key
 24 questions that DEA would need to provide
 25 input on before the report is finalized. One

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1 it appears to be.
 2 (Prevoznik Exhibit 26 marked
 3 for identification.)
 4 QUESTIONS BY MR. MAHADY:
 5 Q. Okay. I'm going to mark P,
 6 Prevoznik 24 [sic].
 7 Okay. And there is a back.
 8 A. Okay. Thank you.
 9 Q. Okay. Again, this document has
 10 a US DEA Bates number; is that correct?
 11 A. Yes.
 12 Q. All right. So this document
 13 was in the possession, custody and control of
 14 the United States DEA, correct?
 15 A. Correct.
 16 MR. FINKELSTEIN: And appears
 17 to be identical to ABDC269353.
 18 MR. MAHADY: And I did not say
 19 it wasn't.
 20 MR. FINKELSTEIN: Progress.
 21 QUESTIONS BY MR. MAHADY:
 22 Q. This document is dated
 23 October 29, 1996, right?
 24 A. It looks like 1996.
 25 Q. Yeah, the stamp is really not

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1 the best.
 2 A. Yeah, it's a little hard to
 3 say, but, yeah, it looks like 1996.
 4 Q. Okay. And that's just under
 5 one month after Mr. Zimmerman sent his letter
 6 describing the proposed program to Thomas
 7 Gitchel; is that right?
 8 A. Yes.
 9 Q. Okay. And in the first
 10 paragraph of this letter which is sent to
 11 Bergen Brunswig from Mr. Gitchel, he said
 12 that "reference is made to your recent letter
 13 in which you requested that Bergen Brunswig
 14 be permitted to replace its current
 15 telephonic reporting of suspicious orders
 16 with a daily report transmitted by
 17 facsimile."
 18 Did I read that correctly?
 19 A. Yes.
 20 Q. Okay. So the DEA understood
 21 that Bergen Brunswig was trying to replace
 22 its daily suspicious order reporting with
 23 this summary fax, right?
 24 MR. FINKELSTEIN: Objection to
 25 the characterization.

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1 months for ARCOS data to catch up.
 2 Q. Okay.
 3 A. To catch up. So...
 4 Q. But at least Bergen Brunswig
 5 was saying to the DEA these are suspicious
 6 orders that we're reporting, correct?
 7 A. That's what it says, yes.
 8 Q. Okay. So your expectation
 9 would be that the DEA would have corrected
 10 them and said, no, you certainly can't be
 11 referring to suspicious orders if you're
 12 referring to after-the-fact sales; is that
 13 right?
 14 MR. FINKELSTEIN: Objection.
 15 Mischaracterizes. Calls for
 16 speculation.
 17 THE WITNESS: I'm sorry, can
 18 you repeat that?
 19 QUESTIONS BY MR. MAHADY:
 20 Q. Bergen Brunswig was developing
 21 a program to meet with their suspicious order
 22 reporting requirements, correct?
 23 MR. FINKELSTEIN: Objection.
 24 Scope. Calls for speculation.
 25

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1 THE WITNESS: It looks like --
 2 yes, so that's what it looks like, but
 3 it -- because it's a daily report of
 4 sales that have been commenced, it
 5 would be the excessive purchase
 6 reports.
 7 QUESTIONS BY MR. MAHADY:
 8 Q. Okay. But they're specifically
 9 referring to suspicious orders?
 10 A. I see that's what -- what
 11 they're saying, but I'm just -- I'm telling
 12 you that we've already shown and have been
 13 clear that suspicious orders are prior to
 14 shipment.
 15 So you're giving us a -- in
 16 reading this, you're giving us after-the-fact
 17 purchase reports, and that was --
 18 Q. Okay. So would -- I'm sorry.
 19 A. And that was part -- and we at
 20 DEA at this time in particular, 1996, where
 21 ARCOS was at least 9 to 12 months not being
 22 accurate or being caught up to speed, this
 23 was -- this was a very good tool for us
 24 because it was more up-to-date information
 25 than we would have if we waited the 9 or 12

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1 QUESTIONS BY MR. MAHADY:
 2 Q. That's what these letters are
 3 about?
 4 A. Well, I mean, it started with
 5 an excessive -- we started with an excessive
 6 purchase model, and now you jumped to
 7 suspicious orders, so --
 8 Q. Right.
 9 So there was a reference in the
 10 last document to excessive purchase reports?
 11 A. Right, which are -- which are
 12 after the fact.
 13 Q. After the fact.
 14 A. Right.
 15 Q. And this new fax system is to
 16 replace the daily phone calls.
 17 Are we on the same page?
 18 A. Right.
 19 Q. Okay. And the daily phone
 20 calls were to report suspicious orders,
 21 correct?
 22 A. Okay.
 23 Q. Okay. And these faxes are to
 24 report suspicious orders as well, as
 25 represented by Bergen Brunswig?

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1 MR. FINKELSTEIN: Objection.
 2 Foundation.
 3 THE WITNESS: Well, it's a
 4 little confusing because you're saying
 5 that you're going to pull the orders
 6 and then you're going to fax the
 7 summaries to us after the fact.
 8 QUESTIONS BY MR. MAHADY:
 9 Q. Well, let's look at the DEA's
 10 response.
 11 A. Right?
 12 Q. Let's look at the DEA's
 13 response. This is from the DEA. "Reference
 14 is made to your recent letter in which you
 15 requested that Bergen Brunswick be permitted
 16 to replace its current telephonic reporting
 17 of suspicious orders with a daily report
 18 transmitted by facsimile."
 19 Okay? So the DEA is saying
 20 your request is to report your daily
 21 suspicious order reporting, correct?
 22 A. Correct.
 23 Q. Okay. The DEA goes on to say,
 24 "We have reviewed your proposal and feel that
 25 it could be a viable alternative to the

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1 A. So it wouldn't be a suspicious
 2 order. It would be an excessive purchase.
 3 Q. Okay. Let's keep reading.
 4 A. It's an after-the-fact
 5 purchase.
 6 Q. "As proposed, the summary
 7 report would include the customer's name,
 8 address and DEA number, a description of the
 9 item ordered, the NDC number, date ordered,
 10 active ingredient volume ordered and shipped,
 11 and the customer's allowance on average -- or
 12 average order."
 13 Did I read that correctly?
 14 A. Yes.
 15 Q. Okay. And what the DEA is
 16 saying is that we understand that you want to
 17 replace your daily suspicious order reporting
 18 with a summary fax that would include, among
 19 other information, the amount of product that
 20 was shipped.
 21 A. Right. So they're reporting
 22 excessive -- they're doing an excess purchase
 23 report, is what they're doing.
 24 Q. Okay. Now, do you see anywhere
 25 in the first two paragraphs where the DEA

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1 current system. It is our understanding that
 2 a computer program has been created that can
 3 compare a customer's controlled substances
 4 orders to an average of the customer's order
 5 for the prior four months. Customer orders
 6 that exceed their four-month average order
 7 history by an as-yet unspecified percentage
 8 would be shown on a summary report that would
 9 be sent to the appropriate DEA field office
 10 on a daily basis."
 11 Did I read that correctly?
 12 A. Yes.
 13 Q. Okay. And they are talking
 14 here about suspicious orders, correct?
 15 MR. FINKELSTEIN: Objection.
 16 Scope. Mischaracterizes.
 17 THE WITNESS: Well, no. If you
 18 keep going, it gets down to a reading
 19 of both ordered and shipped. So
 20 they're indicating it's after the
 21 fact.
 22 QUESTIONS BY MR. MAHADY:
 23 Q. Right.
 24
 25

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1 clarifies that what you are proposing Bergen
 2 Brunswick is an excessive purchase reporting
 3 system, not a suspicious order reporting
 4 system?
 5 A. No, I don't.
 6 Q. Okay. They -- the DEA says
 7 suspicious order, right?
 8 MR. FINKELSTEIN: Objection.
 9 Mischaracterizes the document.
 10 QUESTIONS BY MR. MAHADY:
 11 Q. The first sentence.
 12 A. Yes, it's reference to your
 13 letter.
 14 Q. Suspicious order?
 15 A. Yeah.
 16 Q. Okay. Now, these excessive
 17 purchase reports, just because we've talked
 18 about them in the last document, you just
 19 brought them up, the DEA understood that
 20 these were also suspicious order reports,
 21 right?
 22 A. No, because they were after the
 23 fact.
 24 Q. Okay. So the DEA did not
 25 understand that the monthly reports were

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1 suspicious order reports?
 2 A. Well, I can just tell you
 3 what D -- DEA policy has been not to approve
 4 a system. It has also been that a suspicious
 5 order is prior to shipment.
 6 Q. Is it possible that the DEA
 7 deviated from their policy?
 8 MR. FINKELSTEIN: Objection.
 9 Calls for speculation.
 10 THE WITNESS: I can just tell
 11 you what the policy is of DEA.
 12 QUESTIONS BY MR. MAHADY:
 13 Q. I appreciate that.
 14 Is it possible that they
 15 deviated from their policy?
 16 MR. FINKELSTEIN: Calls for
 17 speculation.
 18 THE WITNESS: Anything is
 19 possible.
 20 QUESTIONS BY MR. MAHADY:
 21 Q. Okay. And it's possible that
 22 they deviated from their policy in approving
 23 for implementation nationwide a suspicious
 24 order monitoring system that reported
 25 suspicious orders after the order had already

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1 monthly suspicious order report, the new
 2 program will compare the customer's order to
 3 his or her previous orders rather than to
 4 orders placed by other customers."
 5 Did I read that correctly?
 6 A. Yes.
 7 Q. Now, the DEA is the one
 8 referring to the monthly report as a
 9 suspicious order report, correct?
 10 A. Yes.
 11 Q. Okay. So at least some
 12 individuals at the DEA understood the monthly
 13 report of after-the-fact sales to be
 14 suspicious order reports, based off of this
 15 document?
 16 MR. FINKELSTEIN: Calls for
 17 speculation.
 18 THE WITNESS: I don't know. I
 19 mean, it -- I think at this time
 20 excessive purchase and suspicious
 21 orders were sometimes understood as
 22 one or the other, but clearly a
 23 suspicious order that we have been
 24 clear on, the suspicious order was not
 25 to be -- was prior to shipment.

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1 been shipped?
 2 MR. FINKELSTEIN: Calls for
 3 speculation.
 4 THE WITNESS: Can you please
 5 repeat it?
 6 MR. MAHADY: Can you read that
 7 back? Because I probably can't do it
 8 as well the second time.
 9 (Court Reporter read back
 10 question.)
 11 MR. FINKELSTEIN: Calls for
 12 speculation and mischaracterizes the
 13 document.
 14 You can answer.
 15 THE WITNESS: Yeah, I don't
 16 know.
 17 QUESTIONS BY MR. MAHADY:
 18 Q. It's possible?
 19 MR. FINKELSTEIN: Calls for
 20 speculation.
 21 THE WITNESS: It's possible.
 22 QUESTIONS BY MR. MAHADY:
 23 Q. Okay. Now, the next -- the
 24 third paragraph. "We note that unlike the
 25 program that generates Bergen Brunswig's

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1 So summary reports, if -- any
 2 summary report that showed sales that
 3 were commenced and done were
 4 considered excessive purchase orders.
 5 They were not suspicious orders,
 6 because suspicious orders would be
 7 before the shipment.
 8 QUESTIONS BY MR. MAHADY:
 9 Q. That's not in the regulation,
 10 correct?
 11 MR. FINKELSTEIN: Objection.
 12 Argumentative. Mischaracterizes the
 13 regulation.
 14 QUESTIONS BY MR. MAHADY:
 15 Q. Does the regulation say that a
 16 suspicious order needs to be reported prior
 17 to shipment?
 18 A. It says immediately upon
 19 discovery.
 20 Q. Okay.
 21 A. And the statute says you
 22 have -- that each registrant is to maintain
 23 effective controls of that.
 24 Q. I appreciate that.
 25 But very specifically, does

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1 the registrate -- does the statute or the
 2 implementing regulations say that a
 3 suspicious order must be reported prior to
 4 shipment?
 5 MR. FINKELSTEIN: Asked and
 6 answered.
 7 MR. MAHADY: I don't believe he
 8 answered the question, that specific
 9 question.
 10 MR. FINKELSTEIN: I believe he
 11 did.
 12 You can answer again.
 13 THE WITNESS: I thought I did,
 14 too.
 15 The statute requires to have
 16 effective control to guard against
 17 diversion.
 18 QUESTIONS BY MR. MAHADY:
 19 Q. I appreciate that.
 20 A. So if you have a suspicious
 21 order, which is prior to shipping, you have a
 22 reason or reason to believe that that -- that
 23 is going to be diverted into the illicit
 24 market, right? So your system is designed to
 25 give -- to find that reason or reasons why

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1 A. Sure.
 2 Q. -- and I'm just talking about
 3 the text of the regulations. Okay?
 4 Does the text of the
 5 regulations contain anything that explicitly
 6 says that a suspicious order must be reported
 7 to the DEA prior to shipment?
 8 A. No, it says immediately upon
 9 discovery.
 10 Q. Okay. Now --
 11 MR. FINKELSTEIN: Counsel, I'm
 12 going to ask for a break in five
 13 minutes.
 14 MR. MAHADY: Sure.
 15 QUESTIONS BY MR. MAHADY:
 16 Q. Tom Gitchel, okay, he's the one
 17 that wrote this letter, right?
 18 A. Yes.
 19 Q. And at least to Tom Gitchel,
 20 Bergen Brunswick's monthly report was a
 21 suspicious order report?
 22 MR. FINKELSTEIN: Calls for
 23 speculation. Scope.
 24 THE WITNESS: I'm not sure what
 25 Tom -- yeah.

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1 this shipment -- or why this order is to be
 2 suspicious. That is prior to shipping.
 3 Q. Okay.
 4 A. So in order to maintain
 5 effective controls, you would then have to
 6 look at the suspicion. What triggered the
 7 suspicion -- we're in Bergen Brunswick. Let's
 8 go with Bergen. What triggered Bergen to
 9 say, "Wait a minute, something's not right
 10 with this order."
 11 Q. Okay.
 12 A. So then they should halt and
 13 try to figure out, what can we alleviate
 14 that.
 15 Q. Okay.
 16 A. What can we alleviate to that
 17 suspicion.
 18 So if you're just giving us
 19 summary reports at the end where we've
 20 already shipped it and say, "these are all
 21 suspicious orders," well, what did you -- how
 22 did you maintain any effective controls?
 23 That would be my question.
 24 Q. Okay. I have a very specific
 25 question --

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1 QUESTIONS BY MR. MAHADY:
 2 Q. But Tom refers to it as a
 3 monthly suspicious order report, correct?
 4 A. Right.
 5 Q. All right. And at least to Tom
 6 Gitchel, his understanding of what was being
 7 proposed is a daily fax of suspicious orders
 8 that would include, among other information,
 9 the amount that was shipped, correct?
 10 A. Correct.
 11 MR. FINKELSTEIN: Scope. Calls
 12 for speculation.
 13 QUESTIONS BY MR. MAHADY:
 14 Q. Now, if you can turn to the
 15 next page, last paragraph, "We look forward
 16 to working with you on this new project which
 17 we, too, hope will lead to a more efficient
 18 suspicious order reporting system."
 19 Did I read that correctly?
 20 A. Yes.
 21 Q. Now, they clearly were
 22 developing a suspicious order reporting
 23 system, right?
 24 MR. FINKELSTEIN: Objection.
 25 Vague. Scope. Calls for speculation.

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1 THE WITNESS: Again, I can only
 2 reiterate what the DEA policy is.
 3 Suspicious orders are prior to
 4 shipment.
 5 QUESTIONS BY MR. MAHADY:
 6 Q. But you're here on behalf of
 7 the DEA and registrant that was provided --
 8 or guidance that was provided to registrants.
 9 Tom Gitchel was the chief
 10 liaison -- the chief of the liaison and
 11 policy section, right?
 12 A. Yes.
 13 Q. He's not some low-level DEA
 14 employee, right?
 15 A. No.
 16 Q. He's pretty high up?
 17 A. Yes.
 18 Q. Okay. And his section was the
 19 one that was responsible for interpreting the
 20 regulations, correct?
 21 MR. FINKELSTEIN: Objection.
 22 Scope. Foundation.
 23 You can answer.
 24 THE WITNESS: Yes.
 25

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1 MR. MAHADY: Okay. We can take
 2 a break.
 3 VIDEOGRAPHER: We're going off
 4 record. The time is 2:32.
 5 (Off the record at 2:32 p.m.)
 6 VIDEOGRAPHER: We're going back
 7 on record. Beginning of Media File
 8 Number 7. The time is 2:45.
 9 QUESTIONS BY MR. MAHADY:
 10 Q. All right. Mr. Prevoznik,
 11 sticking with Exhibit Prevoznik 24 for just
 12 one more question or two.
 13 Turning back to the first page
 14 of that document from Mr. Gitchel to
 15 Mr. Zimmerman at Bergen Brunswick, it says
 16 that -- Mr. Gitchel said, "We agree that it
 17 would be prudent to test this new program
 18 before instituting it nationwide and concur
 19 with your suggestion to use the DEA Los
 20 Angeles division office for the beta test."
 21 Did I read that correct?
 22 A. Yes.
 23 Q. All right. And it says, "We
 24 would appreciate it if you could postpone
 25 starting the testing until after February 1,

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1 QUESTIONS BY MR. MAHADY:
 2 Q. And at least to Tom Gitchel,
 3 the monthly reports, the monthly excessive
 4 purchase reports, were suspicious order
 5 reports, correct?
 6 MR. FINKELSTEIN: Objection.
 7 Scope. Calls for speculation. Asked
 8 and answered.
 9 THE WITNESS: We've also read
 10 letters --
 11 QUESTIONS BY MR. MAHADY:
 12 Q. Mr. Prevoznik --
 13 A. I'm just telling you that
 14 Mr. Gitchel also wrote letters that we went
 15 through this morning that also said what I
 16 had said the DEA's policy is.
 17 Q. Okay.
 18 A. It's after the shipment --
 19 suspicious orders prior to shipment.
 20 Q. So was Mr. Gitchel giving
 21 inconsistent guidance to the registrants, in
 22 your opinion?
 23 MR. FINKELSTEIN: Scope.
 24 You can give your opinion.
 25 THE WITNESS: Slightly, yes.

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1 1997, as Ms. Betsy Willis, who has been
 2 selected for the diversion program manager
 3 position in the Los Angeles field division,
 4 will not be reporting for duty until the end
 5 of January."
 6 Did I read that correctly?
 7 A. Yes.
 8 Q. All right. And in preparing
 9 for your deposition today, did you have the
 10 opportunity to speak with Ms. Betsy Willis?
 11 A. No, I did not.
 12 Q. I would like to mark Prevoznik
 13 25.
 14 (Prevoznik Exhibit 25 marked
 15 for identification.)
 16 QUESTIONS BY MR. MAHADY:
 17 Q. For the record, while the
 18 witness has an opportunity to read the
 19 document, the Bates number is
 20 ABDCMDL00269350.
 21 It's a letter from Chris
 22 Zimmerman to Thomas Gitchel, chief liaison
 23 and policy section, US DEA, December 30,
 24 1997.
 25 A. Okay.

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1 Q. Okay. Let's start with the
 2 first paragraph of the letter from
 3 Mr. Zimmerman to Mr. Gitchel.
 4 "This letter serves as a follow
 5 up to previous written correspondence, copy
 6 enclosed, and telephone conversations
 7 between -- Bergen Brunswig Drug Company has
 8 had with the DEA pertaining to BBDC's newly
 9 developed system to monitor and report
 10 customer orders of controlled substances
 11 which fit the suspicious order criteria
 12 outlined in 21 CFR 1301.74(b)."
 13 Did I read that correctly?
 14 A. Yes.
 15 Q. Okay. So this correspondence
 16 relates to Bergen Brunswig's development of a
 17 new suspicious order monitoring system to
 18 meet the requirements of 21 CFR 1301.74(b),
 19 correct?
 20 MR. FINKELSTEIN: Scope.
 21 THE WITNESS: Yes.
 22 QUESTIONS BY MR. MAHADY:
 23 Q. Okay. Next paragraph. "The
 24 system is clearly described in the enclosed
 25 September 30, 1996 correspondence. Per your

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1 A. I don't believe so.
 2 Q. Okay. And what about anyone
 3 who was at the Tampa DEA office in June
 4 of 1997?
 5 A. I'm trying to remember where
 6 everybody was. I'm not sure.
 7 Q. Okay. Did you speak with
 8 anyone who was involved -- anyone at the DEA
 9 who was involved in the development and
 10 testing of the Bergen Brunswig suspicious
 11 order monitoring system in 1990 -- between
 12 1996 and 1998, to your knowledge?
 13 A. Not to my knowledge.
 14 Q. Okay. The next paragraph. "We
 15 have had several conversations/meetings with
 16 Ms. Betsy Willis, DEA diversion program
 17 manager; Ms. Valencia Abrams, DEA Los Angeles
 18 division group supervisor; Mr. Thomas Cox,
 19 DEA Riverside diversion group supervisor; and
 20 Mr. Arthur Fierman-Rentas, DEA Tampa
 21 diversion group supervisor. All DEA
 22 personnel currently involved with the beta
 23 test program have been very pleased, and
 24 Ms. Willis has given BBDC permission to
 25 discontinue the submission of monthly ARCOS

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1 instruction, BBDC began beta testing the new
 2 suspicious order reporting system with the
 3 DEA Los Angeles field office in March 1997.
 4 Our BBDC Valencia division began the new
 5 suspicious order reporting to the LA DEA
 6 office in March 1, 1997; BBDC Corona division
 7 began the new reporting to the Riverside DEA
 8 office on April 1, 1997; and BBDC Hawaii
 9 began this new reporting to the LA DEA office
 10 on May 1, 1997; and BBDC Orlando began the
 11 new reporting to the Tampa DEA office on
 12 June 1, 1997. All BBDC test divisions are
 13 currently reporting suspicious orders to DEA
 14 via the automated fax function of the new
 15 reporting system."
 16 Did I read that correctly?
 17 A. Yes.
 18 Q. Okay. And in preparing for
 19 your testimony today, did you speak with
 20 anyone who was at the Los Angeles field
 21 office in 1997?
 22 A. No.
 23 Q. In preparing for your testimony
 24 today, did you speak with anyone who was at
 25 the Riverside DEA office on April 1, 1997?

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1 suspicious order report, parents, variance
 2 report, to DEA for the BBDC Corona, Valencia
 3 and Hawaii divisions. Correspondence
 4 enclosed."
 5 Sitting here today, you have no
 6 reason to dispute that all the individuals
 7 involved with the testing were very pleased
 8 with the suspicious order monitoring program
 9 being developed?
 10 A. I have no idea.
 11 MR. FINKELSTEIN: Wait. Scope.
 12 Calls for speculation.
 13 You can answer in your personal
 14 capacity.
 15 THE WITNESS: I have no idea.
 16 QUESTIONS BY MR. MAHADY:
 17 Q. It goes on to say at the end of
 18 the page, "BBDC has approached other DEA
 19 field offices regarding the implementation
 20 and beta testing of our new suspicious order
 21 reporting system. However, those DEA field
 22 offices have indicated that they would not
 23 implement the new reporting system until they
 24 received direction from Washington, DC."
 25 Did I read that correctly?

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1 A. Yes.
 2 Q. Top of the next page. "BBDC
 3 has already made several changes to our
 4 proposed new reporting system at the
 5 direction of the DEA field offices in whose
 6 jurisdiction it is being tested. It has been
 7 an extremely positive experience working
 8 closely with DEA to develop a suspicious
 9 order reporting system that benefits both the
 10 wholesaler and the DEA."
 11 Did I read that correctly?
 12 A. Yes.
 13 Q. Okay. Based off of this
 14 document, Bergen Brunswick Drug Corporation
 15 developed this suspicious order reporting
 16 system in '96 to '98 with the DEA?
 17 MR. FINKELSTEIN: Scope.
 18 Foundation. Calls for speculation.
 19 THE WITNESS: From the various
 20 letters that you've given me, Bergen
 21 Brunswick came with a system that they
 22 wanted to show us, asked us for our
 23 input. So they showed us the design
 24 of what they were -- the design of the
 25 system that they were proposing to put

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1 designing it, Bergen Brunswick came to
 2 us. So this is between Bergen and us.
 3 QUESTIONS BY MR. MAHADY:
 4 Q. Between Bergen and the DEA?
 5 A. DEA, right.
 6 Q. Okay. And in designing it, the
 7 DEA provided input on the design, correct?
 8 A. Yes.
 9 MR. FINKELSTEIN: Wait, scope.
 10 THE WITNESS: Sorry.
 11 QUESTIONS BY MR. MAHADY:
 12 Q. And the DEA tested the program,
 13 correct?
 14 MR. FINKELSTEIN: Scope.
 15 THE WITNESS: Yes.
 16 QUESTIONS BY MR. MAHADY:
 17 Q. And the DEA, based off of this
 18 document, was very pleased with how the
 19 suspicious order monitoring program was being
 20 run, correct?
 21 MR. FINKELSTEIN: Scope. Calls
 22 for speculation.
 23 THE WITNESS: That's what it
 24 appears from the letter.
 25

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1 nationwide.
 2 So we provided input. We
 3 tested it with them. So, yes.
 4 QUESTIONS BY MR. MAHADY:
 5 Q. Okay. So, yes, the DEA
 6 developed the program -- the design of the
 7 program with Bergen Brunswick, correct?
 8 MR. FINKELSTEIN: Asked and
 9 answered. Scope. Foundation.
 10 You can answer.
 11 THE WITNESS: We did not design
 12 it. It said -- I mean, if we go back
 13 to the September letter, it says it's
 14 to introduce the DEA to the innovative
 15 new system under development by Bergen
 16 Brunswick.
 17 So Bergen Brunswick, as of
 18 September 30th, was the one that says,
 19 "Hey, we have this new system." So
 20 they came to us and said, "Hey, could
 21 you review it, help us with it," which
 22 is exactly what we do with
 23 registrants. We do do that. We
 24 listen. We present -- the registrant
 25 is to design it; not us. So in

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1 QUESTIONS BY MR. MAHADY:
 2 Q. Okay. Next paragraph. "We are
 3 confident that this new suspicious order
 4 reporting system will benefit both BBDC and
 5 DEA and are optimistic that we will be able
 6 to begin implementation of the new suspicious
 7 order -- or suspicious reporting system
 8 nationwide. I believe that the new system
 9 will not only save both BBDC and DEA valuable
 10 time and resources, but will also provide DEA
 11 with a more useful tool with which to detect
 12 diversion."
 13 Did I read that correctly?
 14 A. Yes.
 15 Q. Okay. "BBDC is excited about
 16 this opportunity and would like to continue
 17 moving forward with the implementation of our
 18 new suspicious order reporting system."
 19 Did I read that correctly?
 20 A. Yes.
 21 Q. So there's no dispute here that
 22 this is -- this relates to the development of
 23 a suspicious order reporting system, correct?
 24 MR. FINKELSTEIN: Scope.
 25 THE WITNESS: Well, I mean, it

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1 references back to the September 30 --
 2 September 30, 1996, where they explain
 3 what it is, which we just talked
 4 about, excessive purchase
 5 after-the-fact reporting.
 6 QUESTIONS BY MR. MAHADY:
 7 Q. Mr. Prevoznik, they were
 8 developing a suspicious order reporting
 9 system, correct?
 10 MR. FINKELSTEIN:
 11 Argumentative. Asked and answered.
 12 Scope. Calls for speculation.
 13 You can answer.
 14 MR. FARRELL: Objection, again,
 15 on behalf of plaintiffs. We've never
 16 even seen this system that they're
 17 talking about.
 18 THE WITNESS: Could you please
 19 repeat it?
 20 MR. MAHADY: Just note for the
 21 record that plaintiffs have had this
 22 document for approximately ten months.
 23 MR. FARRELL: The ABDC system,
 24 suspicious order monitoring system,
 25 from 1996?

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1 MR. FINKELSTEIN: Scope.
 2 Foundation. Calls for speculation.
 3 That one mischaracterizes prior
 4 testimony. Asked and answered.
 5 You can answer again.
 6 THE WITNESS: Can you -- can
 7 you --
 8 QUESTIONS BY MR. MAHADY:
 9 Q. Bergen Brunswick and the DEA
 10 were developing a suspicious order monitoring
 11 system, correct?
 12 MR. FINKELSTEIN:
 13 Mischaracterizes prior testimony.
 14 Scope.
 15 MR. MAHADY: It was a question.
 16 It wasn't even about his prior
 17 testimony. I'm just asking a
 18 question.
 19 THE WITNESS: Bergen Brunswick
 20 was designing a system, and they asked
 21 us to review it and test it with them.
 22 That's what we did.
 23 QUESTIONS BY MR. MAHADY:
 24 Q. And the system they were
 25 designing was a suspicious order monitoring

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1 MR. MAHADY: You've had these
 2 documents for ten months, Paul.
 3 MR. FARRELL: Yeah. My
 4 understanding is the last version of
 5 the suspicious order monitoring system
 6 produced by ABDC is when?
 7 Excuse me. My point is that --
 8 MR. NICHOLAS: He doesn't have
 9 to answer your questions.
 10 MR. MAHADY: Paul, I don't have
 11 to answer your questions.
 12 MR. NICHOLAS: You're running
 13 the clock. Okay. Let him ask his
 14 questions. You don't have to smirk
 15 about it either. It's not that funny.
 16 Go ahead.
 17 THE WITNESS: I'm sorry, can
 18 you please repeat it?
 19 MR. MAHADY: Neither of us
 20 remember it, so I'll take a shot.
 21 QUESTIONS BY MR. MAHADY:
 22 Q. The DEA and Bergen Brunswick
 23 were developing a suspicious order monitoring
 24 system that Bergen Brunswick intended to meet
 25 the requirements of the regulations, correct?

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1 system, correct?
 2 MR. FINKELSTEIN: Asked and
 3 answered. Calls for speculation.
 4 You can answer again.
 5 THE WITNESS: Based on the
 6 regulations and the statute to
 7 maintain effective controls, the
 8 September 30th letter talks about
 9 after-the-fact shipping. So it
 10 doesn't -- it's not in accordance with
 11 DEA policy as being -- suspicious
 12 orders are prior to shipping.
 13 QUESTIONS BY MR. MAHADY:
 14 Q. Okay. And the DEA --
 15 A. So the September 30th is
 16 specifically talking about shipping. So it's
 17 been shipped. That's what it -- that's what
 18 the September 30th letter you gave me
 19 indicates, that it's been shipped.
 20 Q. Now, we've seen at least two
 21 responses from DEA about the program.
 22 They're approving a suspicious order
 23 monitoring system, right?
 24 MR. FINKELSTEIN:
 25 Argumentative. Asked and answered.

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1 You can answer.
 2 THE WITNESS: They're approving
 3 the system -- they're approving the
 4 implementation of the system that
 5 Bergen Brunswick designed. That's what
 6 they're approving.
 7 QUESTIONS BY MR. MAHADY:
 8 Q. Okay. We can go back to
 9 Prevoznik 22, please.
 10 A. 22.
 11 Q. Mr. Prevoznik, we've already
 12 looked at this document, but now that we've
 13 reviewed what the program consisted of, I
 14 just want to ask a couple follow-up
 15 questions.
 16 First sentence of this document
 17 from Patricia Good, chief liaison and policy
 18 section, states, "This is to grant approval
 19 of your request to implement on a nationwide
 20 basis your newly developed system to identify
 21 and report suspicious orders for controlled
 22 substances and regulated chemicals as
 23 required by federal regulation."
 24 Correct?
 25 A. Correct, that's what it says.

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1 guidance in 1984 versus the guidance that he
 2 was providing in relation to the more recent
 3 development of the Bergen Brunswick suspicious
 4 order monitoring system, correct?
 5 MR. FINKELSTEIN: Foundation.
 6 Scope.
 7 THE WITNESS: Can you give it
 8 to me one more time?
 9 QUESTIONS BY MR. MAHADY:
 10 Q. The inconsistency that
 11 Mr. Gitchele was providing to the registrants,
 12 one was in 1984 where, based off of your
 13 testimony, Mr. Gitchele was advising
 14 registrants that they should not ship orders
 15 that they reported as suspicious, correct?
 16 MR. FINKELSTEIN: Vague.
 17 Foundation. Mischaracterizes the
 18 document.
 19 THE WITNESS: Yes.
 20 QUESTIONS BY MR. MAHADY:
 21 Q. Versus 1996 or '7 where
 22 Mr. Gitchele, who was then the chief of the
 23 liaison policy section of the DEA, is
 24 referring to a monthly report of
 25 after-the-fact purchases as a suspicious

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1 Q. And the subject of this
 2 document that was drafted by the DEA, within
 3 the possession, custody and control of the
 4 DEA and produced in [sic] the DEA in this
 5 litigation, is "approved suspicious order
 6 monitoring system"; is that correct?
 7 A. Yes, that's what it says.
 8 Q. Okay. Mr. Prevoznik, before
 9 the break I think we established that
 10 Mr. Gitchele, who at one time served as the
 11 chief of the liaison and policy section, was
 12 inconsistent in the guidance he reported to
 13 registrants relating to the suspicious order
 14 regulations, correct?
 15 MR. FINKELSTEIN: Objection.
 16 Foundation.
 17 THE WITNESS: That was --
 18 MR. FINKELSTEIN: Wait. Scope.
 19 You can answer in your personal
 20 capacity.
 21 THE WITNESS: Yeah, I answered
 22 in my personal capacity. I said yes.
 23 QUESTIONS BY MR. MAHADY:
 24 Q. Okay. And I believe what we
 25 were comparing there was Mr. Gitchele's

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1 order report and also advising on a
 2 suspicious order monitoring system that would
 3 entail after-the-fact reporting, right?
 4 MR. FINKELSTEIN: Object to the
 5 form.
 6 THE WITNESS: Make sure I got
 7 this right.
 8 The design is by the
 9 registrant. Then we get into the
 10 operate -- the operation of it by the
 11 registrant.
 12 So the inconsistency -- which
 13 I'm talking of me answering this
 14 question -- is that the -- it just
 15 seems a little convoluted, from me
 16 reading this, that the excessive
 17 purchase and the suspicious orders
 18 were being referred to as the same
 19 thing when indeed they are not.
 20 Because the reg -- because the
 21 statute and regulations of then DEA
 22 policy, regulations haven't changed
 23 since they came into effect. The
 24 statute hasn't changed.
 25 So we have been consistent

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1 with -- DEA's consistency has been
 2 that, where I think the
 3 inconsistency -- this is me
 4 speaking -- is that those two words
 5 have been interchanged. Because it's
 6 still referring to after-the-fact
 7 shipments, and suspicious orders are
 8 before shipment.
 9 QUESTIONS BY MR. MAHADY:
 10 Q. Okay. Mr. Prevoznik, the DEA
 11 approved for implementation nationwide a
 12 suspicious order monitoring system that
 13 reported suspicious orders to the DEA on a
 14 daily basis after the report -- after the
 15 orders had already been shipped, correct?
 16 A. Yes.
 17 Q. Mr. Prevoznik, are you aware
 18 that Bergen Brunswick merged with Amerisource
 19 in or around 2001 to become AmerisourceBergen
 20 Corporation?
 21 MR. FINKELSTEIN: Objection.
 22 Scope.
 23 THE WITNESS: I know they
 24 merged. I don't know what year.
 25

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1 MR. MAHADY: I do. And I'll
 2 use my short arms to get you one.
 3 MR. FINKELSTEIN: Thank you.
 4 QUESTIONS BY MR. MAHADY:
 5 Q. Okay. I'm going to read this
 6 letter, which is dated January 14, 2004,
 7 Bates number ABDC MDL 00315827. And it's
 8 from a John R. McCarty, special agent in
 9 charge, to Mr. Mays, manager of regulatory
 10 affairs, AmerisourceBergen.
 11 I want to read the first
 12 paragraph of this letter.
 13 "This letter is to confirm
 14 previous arrangements made by the Drug
 15 Enforcement Administration, DEA, office of
 16 training class coordinator, Thomas Prevoznik,
 17 for a tour of the Bergen Brunswick facility in
 18 Richmond, Virginia, by our diversion
 19 investigator trainees. I appreciate your
 20 cooperation, and I'm certain that the visit
 21 to your distribution plant will be a valuable
 22 learning experience for our students."
 23 Okay. So I believe you already
 24 testified that you do recall some trainings
 25 that were provided by AmerisourceBergen at

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1 QUESTIONS BY MR. MAHADY:
 2 Q. That's fair.
 3 And what was your role at the
 4 DEA in the early 2000s?
 5 A. 2001 I was -- I got promoted to
 6 instructor at DEA officer training.
 7 Q. Okay. And in your role as --
 8 at the office of training, you were
 9 personally familiar with AmerisourceBergen,
 10 Bergen Brunswick's, system, correct?
 11 A. What do you mean?
 12 Q. Do you recall taking the
 13 training classes to the Bergen Brunswick,
 14 AmerisourceBergen distribution centers in
 15 Richmond, Virginia?
 16 A. Yes.
 17 (Prevoznik Exhibit 27 marked
 18 for identification.)
 19 MR. MAHADY: Okay. I'm going
 20 to mark this next document as
 21 Prevoznik 27.
 22 Unfortunately, I have short
 23 arms, Mr. Prevoznik, so...
 24 MR. FINKELSTEIN: The important
 25 thing is, do you have extra copies?

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1 its distribution center in Virginia to the
 2 diversion investigator trainees, correct?
 3 A. Yes.
 4 Q. Okay. And do you recall those
 5 trainings involved discussions about the
 6 applicable rules and regulation that govern
 7 distributors?
 8 A. Yes.
 9 Q. Okay. And by bringing your
 10 diversion investigator trainees to
 11 AmerisourceBergen, you obviously thought that
 12 there was value in AmerisourceBergen advising
 13 them of what their understanding of the
 14 regulations were, correct?
 15 MR. FINKELSTEIN: Objection.
 16 Scope.
 17 You can answer.
 18 THE WITNESS: I'm sorry, can
 19 you repeat the -- repeat the question?
 20 QUESTIONS BY MR. MAHADY:
 21 Q. Well, by bringing your
 22 diversion investigator trainees to
 23 AmerisourceBergen and having
 24 AmerisourceBergen present on the DEA's rules
 25 and regulations, you certainly thought that

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1 AmerisourceBergen was complying with those
 2 rules and regulations, right?
 3 MR. FINKELSTEIN: Objection.
 4 Scope. Mischaracterizes the document.
 5 THE WITNESS: I mean, the goal
 6 wasn't for them to -- the goal was to
 7 expose them to a real registrant. So
 8 give them -- they had -- we go through
 9 security, we go through records,
 10 reports, all of those kinds of things
 11 while we're at training.
 12 We don't have huge cages. We
 13 don't have a bunch of cameras. We
 14 don't have any of the practical things
 15 that the registrant has, especially
 16 Bergen Brunswick. At this time at this
 17 distribution center they had cages,
 18 the locks, the alarms, that kind of
 19 thing.
 20 So that was -- that was to get
 21 them out to expose them to that type
 22 of a real practical application.
 23 QUESTIONS BY MR. MAHADY:
 24 Q. Understood.
 25 A. Right?

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1 exhibit Prevoznik 28. Provide a copy to the
 2 government.
 3 You're free to look at the
 4 presentation, but I'm only going to ask you
 5 questions about the cover document.
 6 A. Okay.
 7 Q. Let me know when you're ready.
 8 The document is Bates-labeled ABDC MDL
 9 00315829.
 10 Ready?
 11 A. Yeah.
 12 Q. This is an internal
 13 AmerisourceBergen memorandum dated
 14 October 25, 2004. Subject, ABC awarded DEA
 15 certificate of appreciation.
 16 I'm going to read the document.
 17 "As many of you already know,
 18 CSRA regularly provides training for
 19 diversion investigator trainees from DEA's
 20 Quantico, Virginia training academy. This
 21 training takes place at AmerisourceBergen's
 22 Richmond distribution center and includes a
 23 tour of the facility.
 24 "At the conclusion of the
 25 training on Friday, October 22, 2004, DEA

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1 So part of it was they also --
 2 I believe Steve actually gave the
 3 presentation. And he talked about the
 4 interaction with DEA, because that's what we
 5 were trying -- these were all new trainees,
 6 so they had never been exposed to any of
 7 this.
 8 So we thought this was a great
 9 opportunity for that --
 10 Q. Okay.
 11 A. -- collaboration.
 12 Q. And that was valuable -- that
 13 was, in fact, a valuable experience for your
 14 diversion investigator trainees?
 15 MR. FINKELSTEIN: Scope.
 16 THE WITNESS: Yes.
 17 QUESTIONS BY MR. MAHADY:
 18 Q. Okay. And AmerisourceBergen
 19 partnered with you to provide that training,
 20 right?
 21 A. Yes.
 22 (Prevoznik Exhibit 28 marked
 23 for identification.)
 24 QUESTIONS BY MR. MAHADY:
 25 Q. Okay. I'm going to mark

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1 presented AmerisourceBergen Corporation with
 2 a certificate of appreciation in recognition
 3 of ABC's contributions to drug enforcement
 4 and to DEA's training program. Steve Mays
 5 accepted the award on behalf of
 6 AmerisourceBergen."
 7 Do you recall DEA awarded
 8 AmerisourceBergen a certificate of
 9 appreciation in 2004?
 10 MR. FINKELSTEIN: Scope.
 11 THE WITNESS: Yes.
 12 QUESTIONS BY MR. MAHADY:
 13 Q. Okay. And they were deserving
 14 of that recognition?
 15 MR. FINKELSTEIN: Scope.
 16 THE WITNESS: Yes.
 17 QUESTIONS BY MR. MAHADY:
 18 Q. You can put that document
 19 aside, Mr. Prevoznik.
 20 Now, fortunately for you, I do
 21 want to revisit P22, which is the DEA
 22 memorandum summarizing the distributor
 23 initiative conference presentation with
 24 AmerisourceBergen.
 25 A. Thank you.

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1 MR. FINKELSTEIN: This is
 2 Prevoznik 22 or Plaintiff's 22?
 3 MR. MAHADY: Plaintiff's 22.
 4 MR. FINKELSTEIN: Plaintiff's
 5 22. Give me a second.
 6 THE WITNESS: It's way at the
 7 bottom.
 8 QUESTIONS BY MR. MAHADY:
 9 Q. I know you already looked at
 10 this this morning.
 11 Are you okay for me to proceed
 12 asking questions?
 13 A. Yes.
 14 Q. All right. Again, internal
 15 memorandum of the DEA. This document
 16 summarizes the DEA's understanding or summary
 17 of the meeting, correct?
 18 A. Correct.
 19 Q. Okay. You do not attend these
 20 meetings?
 21 A. No.
 22 Q. Okay. And just, again, so the
 23 record's clear, it's from Michael Mapes.
 24 You did not speak with Michael
 25 Mapes in preparation for your testimony

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1 Q. Got it.
 2 And based off of the DEA's
 3 summary of the meeting, it says, "In
 4 consultation with Mr. Trant, it was agreed
 5 that if E-Commerce Operations, ODCO, were to
 6 identify a highly suspicious pharmacy to
 7 which AmerisourceBergen was the wholesaler,
 8 ODCO would notify AmerisourceBergen via
 9 e-mail of the suspicious activity for
 10 AmerisourceBergen to review and take the
 11 actions the company deems appropriate."
 12 Did I read that correctly?
 13 A. Yes.
 14 Q. Okay. So at this meeting, the
 15 DEA represented to Mr. Steve Mays of
 16 AmerisourceBergen that if the DEA identified
 17 a highly suspicious pharmacy to which
 18 AmerisourceBergen was the wholesaler, it
 19 would notify AmerisourceBergen via e-mail of
 20 that pharmacy, correct?
 21 A. That's what it says.
 22 Q. Okay. As the representative of
 23 the DEA, do you know if the DEA identified
 24 highly suspicious pharmacies to
 25 AmerisourceBergen?

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1 today?
 2 A. No.
 3 Q. Okay. The last sentence of the
 4 first paragraph, it says, "The purpose of the
 5 meeting was to address the illegal domestic
 6 Internet pharmacy problem and their source of
 7 supply."
 8 Did I read that correctly?
 9 A. Yes.
 10 Q. And that's your understanding
 11 of the purpose of the meeting?
 12 A. Yes.
 13 Q. Okay. If we turn to the next
 14 page, I want to start -- I want to read the
 15 sentence -- the paragraph that starts, "In
 16 consultation with Mr. Trant."
 17 Do you know who Mr. Trant is?
 18 A. He was an attorney with our
 19 Chief Counsel.
 20 Q. Okay. So he's DEA?
 21 A. Yes.
 22 Q. Okay. And E-Commerce
 23 Operations, ODCO, that's DEA as well, right?
 24 A. Yes, that was Mr. Mapes'
 25 section.

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1 MR. FINKELSTEIN: I'm going to
 2 object and instruct you not to answer.
 3 We had a separate witness for
 4 this topic. AmerisourceBergen had the
 5 opportunity to ask questions then and
 6 they didn't. This witness has not
 7 been designated to answer questions
 8 about this topic.
 9 MR. MAHADY: This witness has
 10 already testified in response to
 11 questions from plaintiffs about the
 12 substance of these meetings. These
 13 questions are based directly on what
 14 was represented by the DEA at the
 15 meeting.
 16 MR. FINKELSTEIN: So he can
 17 definitely talk about the distributor
 18 initiative briefing, including the one
 19 to AmerisourceBergen. But if the
 20 question is DEA's practice of
 21 notifying registrants when a different
 22 registrant suspended orders to a
 23 particular suspicious customer, that's
 24 a separate topic.
 25 We had a whole different

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1 witness, we had a deposition of that
 2 witness, and this is not the witness.
 3 MR. MAHADY: Let's keep moving.
 4 QUESTIONS BY MR. MAHADY:
 5 Q. This one-and-a-half-page
 6 summary of the meeting prepared by DEA about
 7 the DEA's meeting with AmerisourceBergen,
 8 does it say in here, in this summary,
 9 anywhere, that the DEA advised
 10 AmerisourceBergen that it should not ship
 11 orders that it reports as suspicious in
 12 the -- I'm not talking about the
 13 presentation, we'll get to that in a second,
 14 but in the summary itself.
 15 A. No.
 16 Q. Okay. If you can turn to --
 17 sticking with this document but turning to
 18 the PowerPoint, I want to revisit the slide
 19 that you looked at earlier with either
 20 Mr. Farrell or Ms. Singer about suspicious
 21 orders. It's on page 7, Bates ending in 155.
 22 A. Okay.
 23 Q. Okay. "Suspicious orders.
 24 Reporting a suspicious order to DEA does not
 25 relieve the distributor of the responsibility

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1 order to the DEA does not relieve -- so after
 2 the fact, yeah.
 3 Q. Okay. If the DEA did not want
 4 the distributors to ship orders that were
 5 reported as suspicious, or stated
 6 differently, after-the-fact reporting, why
 7 didn't the DEA just say that?
 8 A. I think it does say that.
 9 Q. This --
 10 A. Because the statute says you
 11 have to maintain effective controls to guard
 12 against diversion.
 13 Q. Right.
 14 But we've already --
 15 MR. FINKELSTEIN: Let the
 16 witness answer.
 17 QUESTIONS BY MR. MAHADY:
 18 Q. Go ahead.
 19 A. So the statute's already saying
 20 you have to have something in place to
 21 maintain effective controls. So if you
 22 identify a suspicious order, which is prior
 23 to shipping, you have to alleviate that.
 24 Otherwise, you're just shipping -- you're
 25 just shipping suspicious -- the orders that

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1 to maintain effective controls against
 2 diversion."
 3 If I understood your testimony
 4 earlier, you testified that this was the DEA
 5 telling the registrants in 2005 that they
 6 should not report orders that they deemed
 7 suspicious; is that correct?
 8 MR. FINKELSTEIN: Objection.
 9 Mischaracterizes the testimony.
 10 THE WITNESS: Did you just say
 11 that the DEA -- I'm not sure I
 12 understood what you just said. I
 13 thought you said that they weren't
 14 supposed to tell us.
 15 QUESTIONS BY MR. MAHADY:
 16 Q. You testified this morning --
 17 A. Right.
 18 Q. -- and correct me if I'm wrong,
 19 that it was this slide through which the DEA
 20 was telling the distributors that they should
 21 not ship an order that they report to the DEA
 22 as suspicious.
 23 Was that your testimony this
 24 morning?
 25 A. The reporting of suspicious

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1 you have a reason or reason to believe that
 2 it's going to be going to the illicit market.
 3 So if you don't take the step
 4 to alleviate the suspicions, then the
 5 suspicions are still going down the line.
 6 It's not -- it's not stopping.
 7 Q. Mr. Prevoznik, I think we've
 8 already established that the regulation does
 9 not explicitly say do not ship orders that
 10 you report as suspicious, right?
 11 A. I agree with that, but the
 12 statute says you have to have effective
 13 means. So if -- effective means is -- if
 14 you're -- this whole business is purchasing
 15 and selling of controlled substances.
 16 A. DEA registration, that's what
 17 gives you the authority to do it legally in
 18 the United States. So once you become a DEA
 19 registrant, there's statutes and there's
 20 regulations that you have to follow.
 21 Q. Understood.
 22 A. And the public interest
 23 requires that you maintain effective controls
 24 of diversion.
 25 So if a suspicious order is

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1 prior to shipment, which is -- DEA's
 2 interpreted that, then it just -- a
 3 reasonable deduction is that you shouldn't be
 4 sending these down the line if you don't
 5 alleviate that suspicion.
 6 Q. Mr. Prevoznik, we've already
 7 established that the DEA approved a system
 8 with after-the-fact reporting.
 9 MR. FINKELSTEIN: Objection.
 10 QUESTIONS BY MR. MAHADY:
 11 Q. We also established that the
 12 guidance from the DEA, including the guidance
 13 provided by the chief of the section
 14 responsible for interpreting the DEA, was at
 15 times inconsistent on this very issue, right?
 16 MR. FINKELSTEIN: Objection.
 17 Argumentative. Also object as to the
 18 form.
 19 QUESTIONS BY MR. MAHADY:
 20 Q. We've already established that.
 21 MR. FINKELSTEIN: Objection.
 22 Argumentative.
 23 You don't have to accept
 24 counsel's representations as to what
 25 we've established.

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1 And the system --
 2 MR. FINKELSTEIN: Let the
 3 witness answer.
 4 QUESTIONS BY MR. MAHADY:
 5 Q. I'm sorry, Mr. Prevoznik. Were
 6 you done or not?
 7 A. So the operation now becomes
 8 what was actually implemented.
 9 Q. Okay.
 10 A. Did Bergen follow it. So
 11 that's why we do scheduled investigations.
 12 That's why we come out and we review, and we
 13 look at your -- are you following what you
 14 say you're following. That's what we do.
 15 Q. Okay. And the system that was
 16 designed, that the DEA approved to implement,
 17 using your words, had after-the-fact
 18 reporting, correct?
 19 MR. FINKELSTEIN: Asked and
 20 answered.
 21 THE WITNESS: Yes.
 22 QUESTIONS BY MR. MAHADY:
 23 Q. Okay. Mr. Prevoznik, I believe
 24 on day one of your testimony you were asked
 25 questions about specific DEA pharmaceutical

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1 MR. MAHADY: That's a speaking
 2 objection. We can limit the
 3 objections, please.
 4 MR. FINKELSTEIN: He's arguing
 5 with the witness about what we've
 6 established.
 7 SPECIAL MASTER COHEN: You can
 8 answer the question.
 9 THE WITNESS: I would say -- I
 10 said from my personal view of reading
 11 the thing that there was
 12 inconsistency. I'm not speaking on
 13 the DEA's behalf on that. So I don't
 14 think that's consistent with what your
 15 interpretation of what I said was.
 16 QUESTIONS BY MR. MAHADY:
 17 Q. Okay. And --
 18 A. And I also said that the
 19 request was can we implement the system that
 20 Bergen designed. And we said yes, and we
 21 worked with you to do that.
 22 Q. Okay.
 23 A. So again, it's the design, and
 24 now we go to operation.
 25 Q. Got it.

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1 industry conferences, correct?
 2 A. Yes.
 3 Q. And I believe you came back
 4 from a break and you identified some of the
 5 industry conferences that have been held over
 6 the years.
 7 A. Yes, I forgot them.
 8 Q. Perfectly understandable.
 9 And one of the ones that you
 10 identified was the Houston pharmaceutical
 11 industry conference in September of 2007,
 12 right?
 13 A. Yes.
 14 Q. Okay. And I'm going to mark
 15 this as an exhibit.
 16 (Prevoznik Exhibit 29 marked
 17 for identification.)
 18 QUESTIONS BY MR. MAHADY:
 19 Q. You can feel free to read the
 20 whole document. I'm going to ask you about
 21 this section, suspicious orders, on page 2.
 22 Okay?
 23 A. Okay.
 24 Q. This document does not have a
 25 Bates number. I'll represent for the record

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1 that I printed it from the DEA's website
 2 yesterday.
 3 A. Okay.
 4 Q. Okay. On page 2, section
 5 captioned "Suspicious Orders."
 6 With me?
 7 A. Yep.
 8 Q. Okay. The document reads,
 9 "Michael Mapes, chief DEA regulatory section,
 10 and Chris Zimmerman, vice president,
 11 corporate security and regulatory affairs,
 12 AmerisourceBergen, updated the attendees on
 13 when suspicious orders -- reports should be
 14 submitted to authorities."
 15 Did I read that correctly?
 16 A. Yes.
 17 Q. Okay. If you go to the end of
 18 that section, it says, "Presentation slides
 19 attached."
 20 Have you reviewed any
 21 presentation slides from the 2007 industry
 22 conference relating to the presentation
 23 provided by Mr. Zimmerman and Mr. Mapes?
 24 A. No. We couldn't find them.
 25 Q. Okay. And a company can't just

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1 A. I'm ready.
 2 Q. All right. And before I do so,
 3 do you remember --
 4 MR. FINKELSTEIN: What's your
 5 basis for saying Mr. Mapes gave this
 6 presentation?
 7 MR. MAHADY: The printout from
 8 the DEA's website that Mr. Mapes and
 9 Mr. Zimmerman gave a presentation on
 10 suspicious order.
 11 MR. FINKELSTEIN: But this just
 12 says Zimmerman on it.
 13 MR. MAHADY: That's fine. I
 14 can restate.
 15 I'll represent for the record
 16 that the document only says
 17 Mr. Zimmerman.
 18 QUESTIONS BY MR. MAHADY:
 19 Q. This morning, in response to
 20 questions from Ms. Singer, I believe you
 21 testified that the DEA has consistently
 22 advised registrants that chain pharmacies
 23 should be treated no differently than
 24 independent retail pharmacies.
 25 Was that your testimony?

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1 show up and present at the DEA's industry
 2 conference; they have to be invited to
 3 present by the DEA, right?
 4 A. Yes.
 5 Q. Okay. And based off of this
 6 summary from the DEA's website, Mr. Zimmerman
 7 and Mr. Mapes, who was then at the DEA, were
 8 updating the attendees on when suspicious
 9 order reports should be submitted to
 10 authorities.
 11 Did I read that correctly?
 12 A. Yes.
 13 (Prevoznik Exhibit 30 marked
 14 for identification.)
 15 QUESTIONS BY MR. MAHADY:
 16 Q. Okay. Now, I'm going to mark
 17 as Prevoznik 30 a copy of the September 11,
 18 2007 presentation that Mr. Zimmerman and
 19 Mr. Mapes gave at the conference.
 20 And I'm not going to ask you
 21 about the entire presentation. I'm only
 22 going to ask you about a couple different
 23 slides.
 24 So let me know when you're
 25 ready for questions.

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1 A. Yes.
 2 Q. Okay. And if you turn to
 3 ABDCMDL0037190, I have a couple questions on
 4 that point.
 5 You with me?
 6 A. Yep.
 7 Q. All right. The slide is
 8 captioned, "New Customer Due Diligence." The
 9 first bullet, "Know your customer, due
 10 diligence, investigations completed on all
 11 new retail and wholesale accounts."
 12 Did I read that correctly?
 13 A. Yes.
 14 Q. It then says, "Retail chain
 15 pharmacies are exempted."
 16 That -- did I read that
 17 correctly?
 18 A. Yes.
 19 Q. Okay. And that piece of
 20 information was presented by Mr. Zimmerman at
 21 the DEA distributor initiative conference,
 22 correct?
 23 A. Yes.
 24 Q. And that piece of guidance was
 25 provided to all registrants in attendance,

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1 correct?

2 MR. FINKELSTEIN: Object to the

3 characterization.

4 THE WITNESS: Yes, this is

5 Mr. Zimmerman's presentation. Yes.

6 QUESTIONS BY MR. MAHADY:

7 Q. Okay. Are you aware that the

8 DEA informed AmerisourceBergen that retail

9 chain pharmacies were exempted from the know

10 your customer requirements?

11 MR. FINKELSTEIN: Objection.

12 Foundation.

13 THE WITNESS: No.

14 QUESTIONS BY MR. MAHADY:

15 Q. Okay. But this was a

16 presentation that Chris Zimmerman gave at the

17 invitation of the DEA, correct?

18 A. Correct.

19 Q. Okay. Now, if you turn two

20 slides -- before we get to -- this is the

21 slide captioned "Order Monitoring Program."

22 A. Is that 192?

23 Q. Yep.

24 Before we talk about the slide

25 itself, Chris Zimmerman, he was the

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1 QUESTIONS BY MR. MAHADY:

2 Q. Correct?

3 A. Yes, it appears to be.

4 Q. Okay. And then it goes on to

5 say, "ABC's OMP process is now based on

6 identify, capture, investigate and report

7 suspicious orders, all prior to shipment."

8 Did I read that correctly?

9 A. Yes.

10 Q. And "prior to shipment" is

11 emphasized?

12 A. Yes, it's in bold.

13 Q. Okay. Did anyone at DEA stand

14 up at this conference and say,

15 "Mr. Zimmerman, what are you talking about?

16 Order monitoring has never been based on a

17 ship and report process"?

18 MR. FINKELSTEIN: Scope.

19 THE WITNESS: I don't know. I

20 wasn't there. I don't know.

21 I do know based on what's on

22 the line, it said Mr. Mapes stated

23 that the responsibility for making the

24 decision to ship rests with the

25 supplier.

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1 individual from Bergen Brunswig who was

2 communicating with Mr. Gitchel and later

3 Ms. Good of the DEA, right?

4 A. Yes.

5 Q. Okay. And so he was very

6 familiar with the program that was approved

7 for implementation by the DEA, right?

8 MR. FINKELSTEIN: Objection.

9 Scope. Calls for speculation.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. MAHADY:

12 Q. Okay. Mr. Zimmerman says here,

13 "Historically" -- in the second bullet,

14 "Historically, controlled substances listed

15 chemical order monitoring has been based on a

16 ship and report process."

17 Did I read that correctly?

18 A. Yes.

19 Q. And "ship and report," that's

20 in bold, right?

21 A. Yes.

22 Q. So he's emphasizing the ship

23 and report, right?

24 MR. FINKELSTEIN: Objection.

25 Scope. Calls for speculation.

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1 QUESTIONS BY MR. MAHADY:

2 Q. But online --

3 A. Registrants who routinely

4 report suspicious orders, yet fill these

5 orders with reason to believe they are

6 destined for the illicit market, are failing

7 to maintain effective controls against

8 diversion.

9 Q. Okay.

10 A. That's what Mr. Mapes said --

11 Q. Right. And that's --

12 A. -- according to this report.

13 Q. And I appreciate that, and

14 that's based off of the 2007 guidance.

15 But it also says, "Michael

16 Mapes, chief, regulatory section, and Chris

17 Zimmerman, vice president, corporate security

18 of regulatory affairs, AmerisourceBergen,

19 updated the attendees on when suspicious

20 order reports should be submitted to

21 authorities."

22 This is the update, right?

23 MR. FINKELSTEIN: Objection.

24 Argumentative. Scope.

25 You can answer.

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1 THE WITNESS: Well, no, I would
 2 say this -- Mr. Zimmerman presented
 3 what he understood as
 4 AmerisourceBergen, and Mr. Mapes then
 5 clarified what our position was when
 6 he made that statement.
 7 QUESTIONS BY MR. MAHADY:
 8 Q. Okay.
 9 A. But I'm just basically going
 10 off the documents because I wasn't there.
 11 Q. All right.
 12 MR. FINKELSTEIN: Let's take
 13 our next break in a couple of minutes.
 14 MR. MAHADY: Yep.
 15 QUESTIONS BY MR. MAHADY:
 16 Q. Earlier today Ms. Singer showed
 17 you Diversion Investigator Manuals, correct?
 18 A. Yes.
 19 Q. You don't have to take them
 20 out.
 21 A. Okay.
 22 Q. I don't think so.
 23 Diversion Investigator Manuals,
 24 those are internal DEA documents, right?
 25 A. Yes.

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1 THE WITNESS: I'm not sure I'm
 2 following you on that one.
 3 QUESTIONS BY MR. MAHADY:
 4 Q. There's no way to know whether
 5 or not the diversion investigators deviated
 6 from what was in those manuals, correct?
 7 A. Correct.
 8 MR. FINKELSTEIN: Vague.
 9 Scope.
 10 THE WITNESS: Sorry. Sorry.
 11 No.
 12 MR. MAHADY: Let's take our
 13 break.
 14 MR. FINKELSTEIN: Okay. Thank
 15 you.
 16 VIDEOGRAPHER: We're going off
 17 record. The time is 3:40.
 18 (Off the record at 3:40 p.m.)
 19 VIDEOGRAPHER: We're going back
 20 on the record. Beginning of Media
 21 File Number 8. The time is 3:51.
 22 EXAMINATION
 23 QUESTIONS BY MS. FUMERTON:
 24 Q. Good afternoon, Mr. Prevoznik.
 25 My name is Tara Fumerton. And I know we met

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1 Q. Okay. And what's contained in
 2 the Diversion Investigator Manuals is not
 3 shared with the public, correct?
 4 A. Correct.
 5 Q. Okay. And so a registrant
 6 can't just go online and look up the DEA's
 7 Diversion Investigator Manuals from 1990,
 8 correct?
 9 A. Correct.
 10 Q. Okay. And so when those
 11 Diversion Investigator Manuals were in
 12 effect, AmerisourceBergen did not have a copy
 13 of that manual, right?
 14 MR. FINKELSTEIN: Calls for
 15 speculation. Scope.
 16 THE WITNESS: Not to my
 17 knowledge.
 18 QUESTIONS BY MR. MAHADY:
 19 Q. Okay. And the guidance that
 20 was in those Diversion Investigator Manuals,
 21 there was no tracking system at the DEA to
 22 ensure that all diversion investigators were
 23 getting guidance consistent with what was
 24 contained in those manuals, correct?
 25 MR. FINKELSTEIN: Vague.

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1 during the break, but just for the record, I
 2 represent Walmart in this litigation, and I
 3 just have a few questions for you that
 4 hopefully we'll be able to get through
 5 quickly. I'm going to jump around a little
 6 bit, so I apologize if it doesn't quite flow.
 7 Just as a cleanup and to orient
 8 you, during the second day of your testimony
 9 you confirmed that the DEA did not meet with
 10 CVS, Rite Aid, Walmart, Walgreens or HBC
 11 Giant Eagle as part of DEA's distributor
 12 initiative concerning Internet pharmacies,
 13 correct?
 14 A. Correct.
 15 Q. And my colleague then asked you
 16 a follow-up question to that, and the answer
 17 got a little bit muddled, so I just wanted to
 18 clear it up.
 19 He asked whether the DEA
 20 conducted a distributor briefing with these
 21 same retail chain pharmacies related to rogue
 22 pain clinics.
 23 And just so that the record is
 24 clear, the DEA did not conduct any
 25 distributor briefing with the retail chain

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1 pharmacies related to rogue pain clinics,
 2 correct?
 3 MR. FINKELSTEIN: Vague.
 4 THE WITNESS: Yes, but we did
 5 meet with them in the fall of 2013,
 6 the chain -- the chain pharmacies'
 7 managements.
 8 QUESTIONS BY MS. FUMERTON:
 9 Q. And when you say "the chain
 10 pharmacies' management," what do you mean?
 11 A. We had been doing the pharmacy
 12 diversion awareness conferences, and during
 13 like the first four, I think it was the first
 14 four of these meetings, during breaks we
 15 would be kind of scattered and being pulled
 16 aside by a lot of -- quite a few pharmacists
 17 and pharmacy techs. Sometimes they would say
 18 where they were from. A lot of times they
 19 would say they were from a chain. And we
 20 would have discussions about what was going
 21 on in those chains.
 22 So after about the fourth
 23 conference, Mr. Rannazzisi said, all right,
 24 I've had enough. Let's get the top 33 chain
 25 pharmacies. I want their executive

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1 A. Correct.
 2 Q. So there was not a distributor
 3 briefing with the chain pharmacies, correct?
 4 A. Correct.
 5 MR. FARRELL: I'm not going to
 6 take your time. You used the chain
 7 pharmacies with a different lingo.
 8 When you're talking chain
 9 pharmacies, are you talking about in
 10 their role as a distributor?
 11 MS. FUMERTON: Yes.
 12 QUESTIONS BY MS. FUMERTON:
 13 Q. Now, this morning Ms. Singer
 14 asked you a series of questions about HDMA
 15 industry compliance guidelines marked as
 16 Plaintiff's Exhibit 39 and various HDMA
 17 activities.
 18 Do you recall that line of
 19 questioning?
 20 A. Yes.
 21 Q. You were aware that Walmart was
 22 not a member of HDMA, correct?
 23 MR. FINKELSTEIN: Objection.
 24 Scope.
 25 THE WITNESS: I was not aware.

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1 management there at a meeting at NABP.
 2 I was not at that meeting, but
 3 it was held at NABP. And the topics that the
 4 pharmacists and the pharmacy techs from those
 5 chain stores had -- that were brought up were
 6 discussed with the executive management.
 7 Q. So to be clear, you're talking
 8 about a side meeting that occurred at an
 9 industrywide conference; is that correct?
 10 A. It's not -- it wasn't an
 11 industry -- it was specifically for like the
 12 top 30, 30, 35 chain pharmacies, that we
 13 invited them to come to NABP, the National
 14 Board of Pharmacies.
 15 Q. And that's 2013, correct?
 16 Approximately?
 17 A. I think it was the fall
 18 of 2012, to be honest with you.
 19 Q. Okay. But that was not a
 20 distributor --
 21 A. No.
 22 Q. -- briefing --
 23 A. Correct.
 24 Q. -- that you had testified about
 25 previously, correct?

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1 QUESTIONS BY MS. FUMERTON:
 2 Q. Do you know one way or another
 3 whether or not Walmart was a member of HDMA?
 4 A. I don't. I personally don't
 5 know.
 6 Q. If I represent that Walmart was
 7 not a member of HDMA, do you have any reason
 8 to disagree with that representation?
 9 MR. FINKELSTEIN: Scope. Calls
 10 for speculation.
 11 THE WITNESS: No.
 12 QUESTIONS BY MS. FUMERTON:
 13 Q. But you do know, because you
 14 testified previously about this, that Walmart
 15 only distributed controlled substances to
 16 their own stores, correct?
 17 MR. FINKELSTEIN: Scope. Calls
 18 for speculation.
 19 THE WITNESS: Yes. I don't --
 20 I don't know if there was a Walmart
 21 pharmacy that may have sold to
 22 somebody else, but that would be down
 23 the line.
 24 Overall I know that it was --
 25 Walmart's distribution centers sent it

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1 to Walmart stores.
 2 QUESTIONS BY MS. FUMERTON:
 3 Q. And your other commentary after
 4 you said "yes" was simply pure speculation on
 5 your part, correct?
 6 A. Correct.
 7 Q. Walmart was not a wholesale
 8 distributor of controlled substances,
 9 correct?
 10 MR. FINKELSTEIN: Scope.
 11 THE WITNESS: What do you mean
 12 by that?
 13 QUESTIONS BY MS. FUMERTON:
 14 Q. Well, various terms have been
 15 used by plaintiffs when asking questions, and
 16 what I'm distinguishing between are
 17 distributors who distribute the wholesale to
 18 many different pharmacies, independent and
 19 the like, and a distributor like Walmart that
 20 only self-distributes controlled substances.
 21 Do you understand that
 22 distinction?
 23 A. Yes, correct.
 24 Q. Okay. So under that
 25 distinction, Walmart is not a wholesale

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1 registrants have to make their
 2 decisions based on the registration.
 3 HDMA is not a registrant.
 4 QUESTIONS BY MS. FUMERTON:
 5 Q. You would agree that nonmembers
 6 of HDMA might have different business models
 7 than HDMA members, correct?
 8 A. Yes. Yes.
 9 MR. FINKELSTEIN: Wait a
 10 minute.
 11 THE WITNESS: Oh, sorry.
 12 MR. FINKELSTEIN: Scope. Calls
 13 for speculation.
 14 QUESTIONS BY MS. FUMERTON:
 15 Q. And the DEA expects that each
 16 registrant will review its own business model
 17 and design a SOM system that fits its
 18 designed method of distribution, correct?
 19 A. Yes.
 20 Q. Mr. Prevoznik, you're familiar
 21 with immediate suspension orders, correct?
 22 A. Yes.
 23 Q. Are immediate suspension orders
 24 also sometimes referred to as ISOs?
 25 A. Yes.

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1 distributor of controlled substances,
 2 correct?
 3 MR. FINKELSTEIN: Scope.
 4 THE WITNESS: Correct.
 5 QUESTIONS BY MS. FUMERTON:
 6 Q. And that's true for Rite Aid as
 7 well, correct?
 8 MR. FINKELSTEIN: Scope.
 9 THE WITNESS: Yes.
 10 QUESTIONS BY MS. FUMERTON:
 11 Q. And Walgreens, CVS and HBC
 12 Giant Eagle, correct?
 13 MR. FINKELSTEIN: Scope.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MS. FUMERTON:
 16 Q. And would you agree that
 17 nonmembers -- well, let me strike that.
 18 You would agree that there may
 19 be reasons why nonmembers of HDMA do not need
 20 to follow HDMA guidelines, correct?
 21 MR. FINKELSTEIN: Scope.
 22 Vague.
 23 THE WITNESS: I don't even know
 24 that the HDMA members have to follow
 25 the guidelines either. I mean, the

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1 Q. And an immediate suspension
 2 order gives DEA the power, without notice, to
 3 immediately freeze the prescribing ability of
 4 a doctor who DEA believes is diverting
 5 prescription opioids, correct?
 6 A. Well, it could be used for
 7 that. It could be used for other things,
 8 too.
 9 Q. But that's one of the things
 10 that it could be used for, correct?
 11 A. Correct.
 12 Q. And an immediate suspension
 13 order is an important tool to DEA because it
 14 immediately stops the hemorrhaging caused by
 15 a doctor who is diverting prescription
 16 opioids, correct?
 17 A. Again, yes, but it could be
 18 more than that.
 19 Q. So an immediate suspension
 20 order gives DEA the ability to immediately
 21 stop the diversion and then backtrack and
 22 build a criminal case against the diverting
 23 doctor, correct?
 24 A. Well, sometimes they run
 25 parallel.

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1 Q. Sometimes --
 2 A. So it's already -- both are
 3 already ongoing.
 4 Q. Sometimes it can run parallel.
 5 But are you also aware that during the 2006
 6 to 2015 time frame when Mr. Rannazzisi ran
 7 DEA's Office of Diversion Control, DEA
 8 sometimes delayed filing an immediate
 9 suspension order to allow investigators to
 10 gather evidence for a criminal case?
 11 MR. FINKELSTEIN: Scope.
 12 THE WITNESS: I don't have
 13 specifics, but I know that that did
 14 happen.
 15 MS. FUMERTON: And just to
 16 briefly address the scope objection,
 17 Mr. Farrell started out with one of
 18 his very first questions on day two to
 19 Mr. Prevoznik: "The million dollar
 20 question right out of the gate is why
 21 didn't the DEA do more?" And then he
 22 went on to ask a series of questions
 23 relating to the DEA's actions and to
 24 Mr. Patterson's -- and played
 25 Mr. Patterson's testimony.

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1 counsel is asking the question.
 2 MR. FINKELSTEIN: We believe
 3 we're being consistent.
 4 You can ask your next question.
 5 MR. FARRELL: And I prefer my
 6 questions not be stricken.
 7 MS. FUMERTON: And with that,
 8 I've lost track of where we are. Give
 9 me one second.
 10 QUESTIONS BY MS. FUMERTON:
 11 Q. Okay. So you -- just to
 12 reorient us, you agree that sometimes the DEA
 13 would delay issuing an ISO with respect to a
 14 doctor that it was investigating for
 15 potentially diverting controlled substances,
 16 correct?
 17 MR. FINKELSTEIN: Scope.
 18 And I'm going to add that
 19 you're instructed not to testify based
 20 on nonpublic, law-enforcement-
 21 sensitive information.
 22 THE WITNESS: Based on that,
 23 that advice, I can't answer that one.
 24 QUESTIONS BY MS. FUMERTON:
 25 Q. Okay. Well, I'm going to show

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1 And the government didn't once
 2 make an objection to scope as to any
 3 of that testimony.
 4 So I would ask that either I'm
 5 permitted to ask these questions or
 6 all of Mr. Farrell's testimony -- or
 7 all of Mr. Farrell's questions along
 8 those lines be stricken.
 9 MR. FINKELSTEIN: Without
 10 prejudice to your motion to strike,
 11 are you asking for an instruction that
 12 I not object to your questions?
 13 MS. FUMERTON: No, I'm asking
 14 for --
 15 MR. FINKELSTEIN: Good. I'll
 16 make my objections. Thank you,
 17 Counsel.
 18 MS. FUMERTON: Okay. Well, I
 19 will also then continue.
 20 And as I want to make for the
 21 record, though, the fact that the
 22 government is being inconsistent with
 23 respect to its objections regarding
 24 scope, depending on whether or not
 25 plaintiff's counsel or defendant's

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1 you what was previously marked as Prevoznik
 2 Exhibit 17.
 3 And I apologize, I only have
 4 two copies because I thought we would have
 5 other copies here.
 6 And, Mr. Prevoznik, do you
 7 recall --
 8 MS. SINGER: I'm sorry, what is
 9 it?
 10 MS. FUMERTON: It's Exhibit 17.
 11 QUESTIONS BY MS. FUMERTON:
 12 Q. Do you recall reviewing this
 13 exhibit in your prior testimony?
 14 A. Yes.
 15 Q. I think your instruction by
 16 counsel was to not answer the question unless
 17 it was public information; is that correct?
 18 A. Law enforcement sensitive.
 19 Q. Well, Exhibit 17 is testimony
 20 before Congress, correct, dated March 20,
 21 2018?
 22 A. Yes.
 23 Q. And you previously testified
 24 about Mr. Patterson's other comments at this
 25 hearing, correct?

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1 A. Correct.
 2 MR. FINKELSTEIN: Lest there be
 3 any doubt, you're permitted to testify
 4 about Prevoznik 17.
 5 QUESTIONS BY MS. FUMERTON:
 6 Q. So I want to turn your
 7 attention to page 54.
 8 A. Okay.
 9 Q. Okay. And specifically turn to
 10 questioning, just to orient everybody, by
 11 Congresswoman Susan Brooks to Mr. Patterson.
 12 And if you look about three -- one-third way
 13 down the page, you'll see a question by
 14 Mr. -- I'm sorry, by Mrs. Brooks, and she
 15 asks: "Are there instances in which the DEA
 16 pursues an immediate suspension order, the
 17 ISO, in parallel with related potential
 18 criminal investigation?"
 19 Do you see that?
 20 A. Yes.
 21 Q. And Mr. Patterson replies:
 22 "So, ma'am, since October, so the
 23 administration's -- the administrator's
 24 position signs the ISOs when they're issued.
 25 What I've traditionally seen is because of

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1 MS. FUMERTON: Well, you can
 2 use one of the government's exhibits
 3 or we can get a copy if you need that
 4 as well. But it was used previously,
 5 so you should have a copy from the
 6 prior time's exhibit.
 7 MS. MAINIGI: It's your
 8 document, Linda.
 9 QUESTIONS BY MS. FUMERTON:
 10 Q. And then if you go down on that
 11 same page, about to the bottom third, you'll
 12 see another question from Mrs. Brooks, and
 13 she asks: "And are you saying that the US
 14 Attorneys were asking -- as a former
 15 US Attorney, are you saying that US Attorneys
 16 were asking or telling DEA not to issue
 17 ISOs?"
 18 And Mr. Patterson replies: "In
 19 trying to gather evidence in their criminal
 20 case."
 21 Mrs. Brooks responds: "I
 22 understand, but that can take months, if not
 23 years, sometimes in criminal cases. Do you
 24 believe that's what happened prior to you
 25 coming in October of 2017, that delays

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1 the process of where a criminal case is being
 2 investigated, there's been a delay in the ISO
 3 process as they're gathering evidence. One
 4 of the concerns I have, and it goes back to
 5 again what Mr. Griffith said, is that cuts
 6 against the very argument that we have an
 7 imminent problem that we are trying to deal
 8 with."
 9 Do you see that?
 10 A. Yes.
 11 Q. And so Mr. Patterson was
 12 testifying here that the DEA, in fact, was
 13 delaying in issuing ISOs to allow criminal
 14 investigations to occur, correct?
 15 MR. FINKELSTEIN: Objection.
 16 Mischaracterizes the document.
 17 You can answer.
 18 THE WITNESS: Yes.
 19 MS. SINGER: Can I just
 20 interject and ask that you get copies
 21 at the next break in case there's any
 22 redirect that needs to be done here?
 23 It's a little unfair to question the
 24 witness when there isn't a copy of the
 25 exhibit.

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1 happened?"
 2 And Mr. Patterson replies: "I
 3 think that's been an ongoing theme of what
 4 some of these delays are caused by."
 5 Do you see that?
 6 A. Yes.
 7 Q. Do you have any reason to
 8 disagree with Mr. Patterson's testimony?
 9 MR. FINKELSTEIN: Scope.
 10 THE WITNESS: No.
 11 QUESTIONS BY MS. FUMERTON:
 12 Q. And so that meant that for
 13 months, if not years, while these
 14 investigations were occurring, the DEA
 15 permitted doctors it believed were diverting
 16 opioids to continue to divert opioids,
 17 correct?
 18 MR. FINKELSTEIN: Foundation.
 19 Argumentative.
 20 THE WITNESS: I'm sorry, can
 21 you repeat it?
 22 QUESTIONS BY MS. FUMERTON:
 23 Q. Sure.
 24 And so that means that for
 25 months, if not years, the DEA permitted

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1 doctors it believed were diverting opioids to
 2 continue to divert opioids, correct?
 3 MR. FINKELSTEIN: Same
 4 objections.
 5 THE WITNESS: It's possible,
 6 yeah.
 7 MS. FUMERTON: I am going to
 8 pass the witness at this time.
 9 Thank you very much for your
 10 time.
 11 Can we go off the record while
 12 we switch?
 13 VIDEOGRAPHER: We're going off
 14 the record. The time is 4:07.
 15 (Off the record at 4:07 p.m.)
 16 VIDEOGRAPHER: We're going back
 17 on record. Beginning of Media File
 18 Number 9. Time is 4:08.
 19 EXAMINATION
 20 QUESTIONS BY MR. O'CONNOR:
 21 Q. Mr. Prevoznik, I'm Andrew
 22 O'Connor. I represent one of the
 23 manufacturers in the case. We met last time
 24 we were here.
 25 A. Good to see you again.

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1 relevant information.
 2 Is that a fair characterization
 3 of what you said earlier?
 4 A. They're in a better position.
 5 They deal with the customer on a more daily
 6 basis.
 7 Q. And would you say they're in a
 8 better position than DEA?
 9 A. To assess their customer? Yes.
 10 Q. And to assess the adequacy and
 11 effectiveness of their suspicious order
 12 monitoring program?
 13 A. I'm sorry, you're losing me on
 14 that one.
 15 Q. Would you say that a registrant
 16 is in a better position than DEA to assess
 17 the adequacy and effectiveness of its
 18 suspicious order monitoring program?
 19 MR. FINKELSTEIN: Objection.
 20 Vague.
 21 THE WITNESS: No, I wouldn't
 22 agree with that.
 23 QUESTIONS BY MR. O'CONNOR:
 24 Q. Okay. So DEA is in a better
 25 position than the registrant to assess the

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1 Q. Good to see you.
 2 I'll try to be brief here.
 3 Is it fair for me to say that
 4 DEA does not advise registrants on whether
 5 they have an adequate and effective
 6 suspicious order monitoring program?
 7 A. We don't advise?
 8 Q. Correct.
 9 A. No, I don't think that's fair
 10 to say that. I think when we -- when we sit
 11 down and talk to them and they present what
 12 they're having, we're in listening mode. We
 13 offer suggestions, so that would be advising.
 14 Q. Okay. Does DEA approve any
 15 particular suspicious order monitoring
 16 program?
 17 A. No.
 18 Q. And why is that?
 19 A. Because it's ultimately -- it's
 20 incumbent upon the registrant to design and
 21 operate the system, so it's a business
 22 decision made by the registrant.
 23 Q. And I believe you testified
 24 earlier to the fact that one of the reasons
 25 is because the registrant is the one that has

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1 program?
 2 MR. FINKELSTEIN: Vague.
 3 Mischaracterizes prior testimony.
 4 THE WITNESS: I think -- I
 5 think, again, it's the design and it's
 6 the operating. So what is the
 7 operating -- what is the registrant
 8 doing to make the -- when they
 9 implement it, what are they -- what
 10 are -- are they following the
 11 guidelines that they said that they
 12 were going to design, or are they
 13 starting the shift to change when a
 14 customer comes in and asks for -- is
 15 on-boarding. Are they looking at all
 16 the parameters that the customer --
 17 whether it's the questionnaire. Are
 18 they validating all those types of
 19 things.
 20 It has to do with are they
 21 increasing thresholds when they're
 22 asked for a threshold increase. Are
 23 they just arbitrarily increasing it to
 24 some higher number or is there a
 25 scientific basis that makes that

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1 determination.
 2 So that's what we look at when
 3 we go back and look at the system.
 4 QUESTIONS BY MR. O'CONNOR:
 5 Q. I just want to get back to my
 6 question, because I had understood your
 7 testimony earlier today to be that DEA would
 8 not weigh in on the adequacy of a suspicious
 9 order monitoring program because it was the
 10 registrant and not DEA who had the right
 11 information to make that assessment.
 12 MR. FINKELSTEIN: Asked and
 13 answered. Mischaracterizes prior
 14 testimony.
 15 QUESTIONS BY MR. O'CONNOR:
 16 Q. Do you agree with my
 17 characterization of what you said earlier
 18 today?
 19 A. No, I don't agree with your
 20 characterization.
 21 Q. Okay. So do you think the DEA
 22 then is in a better position to make
 23 assessments about the suspicious order
 24 monitoring programs than the registrants are?
 25 MR. FINKELSTEIN: Vague. Asked

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1 their customer -- if the next -- if the next
 2 line down is to the distributors, they should
 3 know what kind of program they have.
 4 Q. And I believe you indicated
 5 it's DEA's position that manufacturers are
 6 supposed to make that assessment of the
 7 distributor's suspicious order monitoring
 8 program before they begin a business
 9 relationship with the distributor; is that
 10 fair?
 11 A. Yes. Know your customer.
 12 Q. And just to be clear,
 13 manufacturers are supposed to assess whether
 14 the distributor's program is adequate and
 15 effective?
 16 A. They should know what it is,
 17 but, again, as I -- manufacturers also
 18 distribute not just to distributors. They
 19 also go to practitioners, sometimes
 20 pharmacies, directly. So they also have to
 21 have the ability to have a suspicious order
 22 monitoring system for those registrants as
 23 well in place.
 24 Q. I understand.
 25 I just want to be very clear

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1 and answered.
 2 THE WITNESS: The suspicious
 3 order monitoring system is incumbent
 4 upon the registrant to design it and
 5 operate it. They are in the position
 6 that knows their customers. We don't
 7 know their customers.
 8 QUESTIONS BY MR. O'CONNOR:
 9 Q. Okay. Only the registrant --
 10 A. So therefore --
 11 MR. FINKELSTEIN: Let him
 12 finish.
 13 THE WITNESS: So, therefore,
 14 the registrant is in a better position
 15 to assess their customers.
 16 How they assess it is something
 17 that they do and that we do.
 18 QUESTIONS BY MR. O'CONNOR:
 19 Q. Okay. Earlier today I believe
 20 you testified that manufacturers should make
 21 sure that distributors' suspicious order
 22 monitoring programs are adequate and
 23 effective.
 24 Did I get that right?
 25 A. Yeah, they should know what

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1 about what the DEA contends a manufacturer
 2 has to do, because earlier it sounded like
 3 you were saying they need to assess whether a
 4 distributor's suspicious order monitoring
 5 program was, in fact, effective.
 6 Is that correct?
 7 A. Well, they should know if their
 8 customer's system is guarding -- is it
 9 guarding against the diversion into the
 10 illicit market.
 11 Q. And is the DEA's position that
 12 they should make that assessment even in
 13 situations where the DEA has refused to make
 14 that assessment?
 15 MR. FINKELSTEIN:
 16 Argumentative. Foundation.
 17 THE WITNESS: You lost me on
 18 that one.
 19 QUESTIONS BY MR. O'CONNOR:
 20 Q. Well, DEA doesn't tell a
 21 registrant whether its program works or not,
 22 does it?
 23 A. Well --
 24 MR. FINKELSTEIN:
 25 Mischaracterizes prior testimony.

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1 THE WITNESS: When --
 2 MR. O'CONNOR: Just a question.
 3 THE WITNESS: When we sit with
 4 the registrant, the registrant
 5 explains what their ordering sys --
 6 their suspicious order system is to
 7 us.
 8 So then when we come back, we
 9 look. Are, in fact, they -- are they
 10 doing what they said they're doing,
 11 and is the system able to identify
 12 suspicious orders. That's what we do.
 13 And our parameters of doing
 14 that are the public interest. So are
 15 there -- do they have in place the
 16 means to identify them and also
 17 safeguard and have effective measures
 18 to not allow for diversion.
 19 QUESTIONS BY MR. O'CONNOR:
 20 Q. Is there any statute or
 21 regulation that you're aware of that says
 22 manufacturers are supposed to assess whether
 23 a distributor's suspicious order monitoring
 24 program is adequate?
 25 A. Not specifically that language.

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1 review -- or registrants generally should
 2 review information regarding physician
 3 prescribing information.
 4 Is that a fair assessment of
 5 what you said?
 6 A. Yes, if they have it.
 7 Q. Okay. Did DEA have physician
 8 prescribing information?
 9 MR. FINKELSTEIN: I'm going to
 10 instruct you not to answer about the
 11 availability of data sources to the
 12 extent that they're nonpublic.
 13 THE WITNESS: Could you repeat
 14 the question?
 15 QUESTIONS BY MR. O'CONNOR:
 16 Q. Sure.
 17 Did DEA have physician
 18 prescribing information?
 19 MR. FINKELSTEIN: And my
 20 instruction, no nonpublic data or
 21 techniques.
 22 THE WITNESS: Right. No, we
 23 didn't -- we have to get it through a
 24 different means.
 25 QUESTIONS BY MR. O'CONNOR:

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1 Q. Okay.
 2 A. It would fall under the statute
 3 of effective means.
 4 Q. And that provision that talks
 5 about effective controls doesn't mention
 6 anything about assessing another registrant's
 7 suspicious order monitoring program, correct?
 8 A. Correct.
 9 Q. And DEA never issued any
 10 guidance to manufacturers informing them that
 11 they were supposed to assess another
 12 registrant's program, correct?
 13 A. Not to my knowledge.
 14 Q. DEA never sent a letter to that
 15 effect to manufacturers?
 16 A. Probably happened in the
 17 manufacturing -- when we met with the
 18 manufacturer. Like the distributor
 19 initiative with a manufacturer, we went over
 20 that.
 21 Q. Can you say, sitting here today
 22 under oath, that that happened?
 23 A. I don't know, but I --
 24 Q. Okay. Earlier today I believe
 25 you testified that manufacturers should

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1 Q. Okay. Let me ask you this:
 2 Are you familiar with IMS or IQVIA data?
 3 A. Yes.
 4 Q. Did DEA have access to IMS or
 5 IQVIA data that described the number of
 6 prescriptions written by particular
 7 physicians?
 8 MR. FINKELSTEIN: Scope. No
 9 law-enforcement-sensitive information.
 10 Okay?
 11 THE WITNESS: Yes.
 12 We do use IQVIA data, but
 13 that's for quotas. Quota section uses
 14 that. It doesn't go down to that
 15 granular -- that's my understanding,
 16 it does not go down to that granular
 17 level that you're describing.
 18 We have asked. We have been
 19 trying to get that data, but we have
 20 been unsuccessful at this point.
 21 QUESTIONS BY MR. O'CONNOR:
 22 Q. And as someone who oversees the
 23 targeting and analysis unit, if there was
 24 information available publicly that you felt
 25 was useful to the DEA identifying diversion,

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1 you would seek it out, correct?

2 MR. FINKELSTEIN: Incomplete

3 hypothetical.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. O'CONNOR:

6 Q. Okay. But you do not have

7 prescriber-level IMS or IQVIA data, true?

8 MR. FINKELSTEIN: Same

9 instruction.

10 THE WITNESS: As I previously

11 said, we do have some, but it's used

12 at the quota level, not to the

13 granular level that you're talking

14 about. We do not have it.

15 QUESTIONS BY MR. O'CONNOR:

16 Q. And there is no statute or

17 regulation that you're aware of that

18 indicates that manufacturers were required to

19 analyze prescriber-level data in connection

20 with their DEA compliance activities,

21 correct?

22 MR. FINKELSTEIN: Asked and

23 answered.

24 THE WITNESS: Correct. But if

25 they have it, then they should look at

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1 Go off the record.

2 VIDEOGRAPHER: Going off the

3 record. The time is 4:19.

4 (Off the record at 4:19 p.m.)

5 VIDEOGRAPHER: Going back on

6 the record. Beginning of Media

7 File 10. The time is 4:20.

8 EXAMINATION

9 QUESTIONS BY MR. EPPICH:

10 Q. Good afternoon, Mr. Prevoznik.

11 You may recall my name is Chris Eppich, and I

12 represent the McKesson distributors in this

13 litigation. I just have a couple of

14 questions for you this afternoon.

15 Are you aware of the federal

16 sentencing guidelines?

17 MR. FINKELSTEIN: Scope.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. EPPICH:

20 Q. Are you aware that the federal

21 sentencing guidelines are used by courts in

22 sentencing after a verdict in a criminal

23 case?

24 MR. FINKELSTEIN: Scope.

25 THE WITNESS: Yes.

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1 it.

2 QUESTIONS BY MR. O'CONNOR:

3 Q. Even though it's not in the

4 statute or the regulation?

5 A. It's knowing your customer.

6 It's putting effective means -- guarding

7 against diversion. So if the information

8 helps you understand your customer better and

9 stops diversion, then you should be looking

10 at it.

11 Q. Did DEA ever indicate in any

12 kind of written guidance document that

13 manufacturers should be analyzing prescriber

14 data in order to fulfill their DEA

15 obligations?

16 A. Not to my knowledge.

17 Q. DEA never sent any letters to

18 the industry to that effect?

19 A. I'm not aware of it.

20 Q. And DEA never posted anything

21 on its website informing manufacturers of its

22 view on this issue?

23 A. Not to my knowledge.

24 MR. O'CONNOR: Thank you for

25 your time.

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1 QUESTIONS BY MR. EPPICH:

2 Q. The DEA doesn't use the federal

3 sentencing guidelines to evaluate

4 registrants' suspicious order monitoring

5 programs, correct?

6 MR. FINKELSTEIN: Scope.

7 Vague.

8 THE WITNESS: Yes. Correct.

9 QUESTIONS BY MR. EPPICH:

10 Q. Correct that they do not?

11 A. Do not.

12 Q. Thank you, sir.

13 Now, when you were training

14 diversion investigators, did you ever

15 instruct diversion investigators to rely on

16 the federal sentencing guidelines to evaluate

17 registrants' suspicious order monitoring

18 programs?

19 MR. FINKELSTEIN: Scope.

20 THE WITNESS: No.

21 MR. EPPICH: Thank you. Let's

22 go off the record.

23 VIDEOGRAPHER: Going off

24 record. The time is 4:21.

25 (Off the record at 4:21 p.m.)

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1 VIDEOGRAPHER: We're going back
 2 on record. Beginning of Media
 3 File 11. The time is 4:23.
 4 EXAMINATION
 5 QUESTIONS BY MS. MAINIGI:
 6 Q. Mr. Prevoznik, you recall we
 7 met a few weeks ago on the first day or two
 8 of your deposition.
 9 I'm going to ask you some more
 10 questions. I'm here representing Cardinal
 11 Health.
 12 Mr. Prevoznik, you did not
 13 speak to Mr. Mapes prior to coming here
 14 today, did you?
 15 MR. FINKELSTEIN: Asked and
 16 answered several times.
 17 THE WITNESS: No.
 18 QUESTIONS BY MS. MAINIGI:
 19 Q. Okay. And you had not spoken
 20 to him prior to day one and day two?
 21 A. Correct.
 22 Q. And you did not speak to
 23 Mr. Wright prior to coming today?
 24 MR. FINKELSTEIN: Asked and
 25 answered.

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1 Q. And you were a diversion
 2 investigator until 2001?
 3 A. Well, I still think I am.
 4 Q. That's right.
 5 A. Still have the same job series.
 6 Q. Your primary duty was as a
 7 diversion investigator until 2001?
 8 A. Yes.
 9 Q. And in that situation, you were
 10 out in the field offices?
 11 A. Yes.
 12 Q. Okay. And you joined the
 13 Office of Diversion Control at headquarters
 14 in May 2012?
 15 A. I believe it was April.
 16 Q. Okay. Now, the last several
 17 days you've been asked a number of questions
 18 about suspicious orders, true?
 19 A. True.
 20 Q. And suspicious, that term has a
 21 particular meaning in the context of
 22 controlled substances, correct?
 23 A. Correct.
 24 Q. And the CFR defines suspicious
 25 order as including orders of unusual size,

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1 THE WITNESS: Correct.
 2 QUESTIONS BY MS. MAINIGI:
 3 Q. And is it true that you've only
 4 still reviewed the questions from
 5 Mr. Wright's deposition, not the answers?
 6 A. Yes.
 7 Q. You've never gone back to
 8 review the answers to Mr. Wright's
 9 deposition, only the questions?
 10 A. Correct.
 11 Q. And that was at the instruction
 12 of your counsel?
 13 MR. FINKELSTEIN: Objection.
 14 I'm going to instruct you not
 15 to answer that.
 16 MS. MAINIGI: I think he
 17 answered that before.
 18 I'll withdraw the question.
 19 MR. FINKELSTEIN: I don't think
 20 he did, but I appreciate you
 21 withdrawing the question.
 22 QUESTIONS BY MS. MAINIGI:
 23 Q. Mr. Prevoznik, you arrived at
 24 the DEA in 1991; is that right?
 25 A. Yes.

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1 orders of unusual frequency and orders that
 2 deviate substantially from a normal ordering
 3 pattern, correct?
 4 A. Correct.
 5 Q. Excuse me.
 6 Now, not every order of unusual
 7 size is indicative of diversion, correct?
 8 MR. FINKELSTEIN: Asked and
 9 answered.
 10 THE WITNESS: Correct.
 11 QUESTIONS BY MS. MAINIGI:
 12 Q. There could be legitimate
 13 reasons for a pharmacy to place an order of
 14 unusual size, correct?
 15 MR. FINKELSTEIN: Asked and
 16 answered.
 17 THE WITNESS: Correct.
 18 QUESTIONS BY MS. MAINIGI:
 19 Q. Can you think of any examples
 20 that come to mind for that, Mr. Prevoznik?
 21 MR. FINKELSTEIN: Calls for
 22 speculation.
 23 THE WITNESS: For which one?
 24 QUESTIONS BY MS. MAINIGI:
 25 Q. Why a pharmacy may place a

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1 larger than usual order.
 2 MR. FINKELSTEIN: Scope. Calls
 3 for speculation.
 4 You can answer in your
 5 individual capacity.
 6 THE WITNESS: It could be a new
 7 hospital opened, a new clinic opened.
 8 A. new hospice center could have
 9 opened. Any one of those.
 10 QUESTIONS BY MS. MAINIGI:
 11 Q. And, Mr. Prevoznik, not every
 12 order of unusual frequency is indicative of
 13 diversion, correct?
 14 MR. FINKELSTEIN: Asked and
 15 answered.
 16 THE WITNESS: Correct.
 17 QUESTIONS BY MS. MAINIGI:
 18 Q. There could be legitimate
 19 reasons for an order of unusual frequency,
 20 true?
 21 MR. FINKELSTEIN: Same
 22 objection.
 23 THE WITNESS: True.
 24 QUESTIONS BY MS. MAINIGI:
 25 Q. Can you think of some examples

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1 answered.
 2 THE WITNESS: Correct.
 3 QUESTIONS BY MS. MAINIGI:
 4 Q. And could there be legitimate
 5 reasons for an ordering pattern that is
 6 abnormal in some manner?
 7 A. Yeah, there could be.
 8 Q. And what are some of those
 9 reasons?
 10 MR. FINKELSTEIN: Scope. Calls
 11 for speculation.
 12 You can answer in your
 13 individual capacity.
 14 THE WITNESS: I'm not really
 15 sure I have an example off the top of
 16 my head on that one right now.
 17 QUESTIONS BY MS. MAINIGI:
 18 Q. Well, how does one define a
 19 normal ordering pattern or something that
 20 diverges from a normal ordering pattern?
 21 A. Well, the example I would give
 22 you is you have a pharmacist, they have their
 23 order, and they will put two down. But they
 24 don't see that one of their employees, who is
 25 either working or not working, has added to

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1 as to why a pharmacy may place an order that
 2 is of unusual frequency?
 3 MR. FINKELSTEIN: Scope. Calls
 4 for speculation.
 5 You can answer in your
 6 individual capacity.
 7 THE WITNESS: Again, it could
 8 be a new customer base, prescriber, a
 9 new doctor's office opened.
 10 That probably would be for a
 11 period of time, and then it would not
 12 keep going and going. It would level
 13 out at some point.
 14 QUESTIONS BY MS. MAINIGI:
 15 Q. But it could certainly explain
 16 a deviation that resulted in an unusual
 17 frequency for a month or two, correct?
 18 MR. FINKELSTEIN: Vague.
 19 THE WITNESS: Yes.
 20 QUESTIONS BY MS. MAINIGI:
 21 Q. Now, Mr. Prevoznik, not every
 22 order that deviates substantially from a
 23 normal ordering pattern is indicative of
 24 diversion, correct?
 25 MR. FINKELSTEIN: Asked and

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1 the order. So they could be at their house,
 2 whatever, added a bottle, two bottles, but
 3 it's later.
 4 So at the end of the day, the
 5 pharmacist -- they know the pattern of the
 6 pharmacist is not to review, that they just
 7 hit "submit," but they know that they're
 8 going to be on the job the next day. So they
 9 come in the next day, they already know
 10 there's two extra bottles or an extra bottle
 11 coming in. So that they've been doing this
 12 for months and month and months, that they've
 13 been stealing from, diverting out of the
 14 pharmacy, because they know the habits of the
 15 pharmacist.
 16 It could be at a hospital. It
 17 could be at a -- just anywhere. If they know
 18 the habits, they're going to figure it out.
 19 Q. So the placing of an order of
 20 unusual size, pattern or frequency, standing
 21 alone, does not indicate that a customer is
 22 diverting controlled substances, correct?
 23 A. Well, I mean, it's disjunctive,
 24 so it could be one of them; it could be two
 25 of them; it could three of them; it could be

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1 a combination.
 2 And so in the example I
 3 would -- I would say is -- I think I've used
 4 it before was the veterinarian that is
 5 ordering Vicodin with the acetaminophen that
 6 is toxic to cats and dogs. So that in
 7 itself, an order of that, would be why are
 8 they doing that.
 9 Q. But standing alone, without
 10 follow-up due diligence, it is not
 11 necessarily always possible to determine
 12 whether an order that is an unusual size,
 13 unusual pattern or frequency is, by itself,
 14 for that reason, indicative of diversion,
 15 correct?
 16 MR. FINKELSTEIN: Asked and
 17 answered. Incomplete hypothetical.
 18 THE WITNESS: Correct.
 19 QUESTIONS BY MS. MAINIGI:
 20 Q. And so some sort of follow-up
 21 due diligence needs to be done by the
 22 distributor or registrant, correct?
 23 MR. FINKELSTEIN: Incomplete
 24 hypothetical. Asked and answered.
 25 THE WITNESS: Right.

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1 THE WITNESS: Yes, it would be
 2 good practice.
 3 QUESTIONS BY MS. MAINIGI:
 4 Q. And but the DEA has not issued
 5 any sort of guidelines indicating how due
 6 diligence should be conducted, true?
 7 A. I mean, I would say that the
 8 letters in 2006 and 2007 have certain
 9 questions to be asked, so that's a guide of
 10 what should be asked or what should be looked
 11 for.
 12 Q. Those are Mr. Rannazzisi's
 13 letters?
 14 A. Yes.
 15 Q. And Mr. Rannazzisi's letters
 16 touched on a few different areas, correct?
 17 A. Correct.
 18 Q. Let me try to focus on
 19 guidelines that might be specific to the idea
 20 of due diligence.
 21 Are there -- are you aware of
 22 DEA ever issuing any guidelines specific to
 23 due diligence that describe how due diligence
 24 should be conducted?
 25 MR. FINKELSTEIN: Asked and

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1 QUESTIONS BY MS. MAINIGI:
 2 Q. And with respect to -- we've
 3 talked a bit about due diligence in the last
 4 couple of days of your deposition.
 5 Do you recall that?
 6 A. Yes.
 7 Q. Okay. And with respect to --
 8 you've been asked questions by both
 9 Mr. Farrell and Ms. Singer about
 10 documentation related to due diligence.
 11 Do you recall that?
 12 A. Yes.
 13 Q. And I believe that you
 14 indicated that there was not any sort of
 15 requirement by the DEA of the maintenance of
 16 due diligence files, correct?
 17 MR. FINKELSTEIN:
 18 Mischaracterizes prior testimony.
 19 THE WITNESS: Yes.
 20 QUESTIONS BY MS. MAINIGI:
 21 Q. Now certainly the DEA's view
 22 appears to be that due diligence is a good
 23 practice or a best practice, fair?
 24 MR. FINKELSTEIN: Foundation.
 25 Mischaracterizes prior testimony.

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1 answered.
 2 THE WITNESS: No, not -- it's
 3 the statute and the regulation.
 4 QUESTIONS BY MS. MAINIGI:
 5 Q. And the statute and regulation
 6 do not specifically speak to due diligence,
 7 correct?
 8 MR. FINKELSTEIN: Asked and
 9 answered.
 10 THE WITNESS: No. I mean, they
 11 do, because they're saying you have to
 12 have effective means to guard against
 13 diversion. So that's the guide.
 14 QUESTIONS BY MS. MAINIGI:
 15 Q. Let me come back to -- it's
 16 effective controls, correct?
 17 A. Effective.
 18 Q. Let me come back to that.
 19 Let's focus just on the phrase "due
 20 diligence."
 21 Are you aware of the phrase
 22 "due diligence" being in either the statute
 23 or the regulation?
 24 MR. FINKELSTEIN: Asked and
 25 answered.

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1 THE WITNESS: It's not.
 2 QUESTIONS BY MS. MAINIGI:
 3 Q. Now, you've referred, I think,
 4 just now and in the last several days to the
 5 term "effective controls," correct?
 6 A. Correct.
 7 Q. And that term is in the statute
 8 or the regulation, correct?
 9 MR. FINKELSTEIN: Asked and
 10 answered.
 11 THE WITNESS: Correct.
 12 QUESTIONS BY MS. MAINIGI:
 13 Q. Okay. Has the DEA ever
 14 explained in guidance what effective controls
 15 means?
 16 MR. FINKELSTEIN: Vague. Asked
 17 and answered.
 18 THE WITNESS: Effective
 19 controls. Well, they have to follow
 20 the rest of the statute to meet
 21 effective controls to guard against
 22 diversion.
 23 QUESTIONS BY MS. MAINIGI:
 24 Q. So has the DEA ever issued any
 25 guidance, Mr. Prevoznik, that serves as a

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1 QUESTIONS BY MS. MAINIGI:
 2 Q. They might have some sort of
 3 requirement to hold on to documents or data
 4 for seven years or something of the sort?
 5 MR. FINKELSTEIN: Scope.
 6 Foundation.
 7 You can answer in your personal
 8 capacity.
 9 THE WITNESS: I know that there
 10 are certain years that certain
 11 documents can be -- that are supposed
 12 to be either archived or -- and then
 13 once it gets archived, I have no idea.
 14 QUESTIONS BY MS. MAINIGI:
 15 Q. Are there certain documents
 16 that you hold on to in your job at DEA that
 17 you hold on to for a certain number of years
 18 because you know you're required to?
 19 MR. FINKELSTEIN: Scope.
 20 THE WITNESS: Yes.
 21 QUESTIONS BY MS. MAINIGI:
 22 Q. And what kind of documents are
 23 those?
 24 A. Oh --
 25 MR. FINKELSTEIN: Scope.

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1 checklist, for example, of everything that
 2 would go into effective controls?
 3 MR. FINKELSTEIN: Vague. Asked
 4 and answered.
 5 THE WITNESS: Not to my
 6 knowledge.
 7 QUESTIONS BY MS. MAINIGI:
 8 Q. Coming back to the concept of
 9 due diligence, the DEA has not issued any
 10 guidance specifying how long a registrant
 11 must hold on to due diligence, correct?
 12 A. Correct.
 13 Q. Does the DEA have any sort of
 14 guidelines as to how long the DEA is required
 15 to hold on to certain types of documents?
 16 MR. FINKELSTEIN: Scope.
 17 You can answer, if you know.
 18 THE WITNESS: Yes, they do.
 19 QUESTIONS BY MS. MAINIGI:
 20 Q. Can you describe some for me?
 21 A. I don't know.
 22 MR. FINKELSTEIN: Scope.
 23 THE WITNESS: I don't know
 24 them, but I know they're out there.
 25

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1 MS. MAINIGI: I'm sorry.
 2 THE WITNESS: I was waiting for
 3 him.
 4 MR. FINKELSTEIN: Scope.
 5 You can answer in your personal
 6 capacity.
 7 THE WITNESS: I know that we
 8 hold on to ARCOS, ARCOS data, drug
 9 theft loss.
 10 QUESTIONS BY MS. MAINIGI:
 11 Q. And do you know approximately
 12 how long you're required to hold on to ARCOS
 13 data?
 14 MR. FINKELSTEIN: Scope.
 15 THE WITNESS: I don't know.
 16 QUESTIONS BY MS. MAINIGI:
 17 Q. The DEA has certainly never
 18 issued any sort of guidance indicating that
 19 registrants must hold on to due diligence
 20 files for 15 years, correct?
 21 A. Yes. The only guidance I know
 22 is it's two years, two years for
 23 recordkeeping for the registrant.
 24 Q. Okay.
 25 A. For us.

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1 Q. But there's no requirement that
 2 a due diligence file even be maintained,
 3 correct?
 4 A. Correct.
 5 Q. So the two-year rule does not
 6 apply to any due diligence files, per se,
 7 correct?
 8 A. Correct. I was just pointing
 9 out that within the regs, there is records
 10 for a two-year period.
 11 Q. Due diligence is certainly an
 12 important part of this process, right?
 13 MR. FINKELSTEIN: Vague.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MS. MAINIGI:
 16 Q. Why do you think the DEA has
 17 never issued any specific guidance on due
 18 diligence?
 19 MR. FINKELSTEIN: Vague.
 20 Instruct you not to answer to
 21 the extent that the answer calls for
 22 predecisional deliberative
 23 communications within the Department
 24 of Justice.
 25 THE WITNESS: I don't know.

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1 THE WITNESS: No.
 2 QUESTIONS BY MS. MAINIGI:
 3 Q. Has the DEA issued any sort of
 4 guidance indicating how long a suspicious
 5 order that's been reported must be
 6 maintained?
 7 A. No.
 8 Q. Now, I think with one of the
 9 prior questioners there was reference to --
 10 well, let me back up.
 11 You prepared back to 1996 for
 12 this deposition, approximately, correct?
 13 A. Well, I mean, I had -- I --
 14 from the letters that you saw, I had some
 15 letters from 1980s that I saw.
 16 Q. So you prepared for various
 17 earlier periods of time?
 18 A. I looked for what I could find.
 19 Q. Okay. And did you speak to any
 20 folks in the field offices to help yourself
 21 prepare for this deposition?
 22 MR. FINKELSTEIN: Asked and
 23 answered.
 24 THE WITNESS: Yes.
 25

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1 QUESTIONS BY MS. MAINIGI:
 2 Q. Now, is there any sort of
 3 requirement -- I'm going to come back to
 4 suspicious orders.
 5 Is there any kind of
 6 requirement to hold on to suspicious orders
 7 themselves that are reported?
 8 MR. FINKELSTEIN: Vague.
 9 THE WITNESS: I'm not sure I'm
 10 following on that.
 11 QUESTIONS BY MS. MAINIGI:
 12 Q. Well, so, for example, if -- I
 13 think when you were talking to one of the
 14 other questioners, there was some reference
 15 to perhaps at some point in time suspicious
 16 orders being faxed in to the DEA.
 17 Do you remember that
 18 discussion?
 19 A. Yes.
 20 Q. Is there any sort of
 21 requirement, either by the DEA or by the
 22 registrant, to hold on to an actual
 23 suspicious order being reported to the DEA?
 24 MR. FINKELSTEIN: Scope.
 25 Vague. Calls for speculation.

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1 QUESTIONS BY MS. MAINIGI:
 2 Q. And who were the folks you
 3 spoke to from the field office?
 4 MR. FINKELSTEIN: Asked and
 5 answered.
 6 THE WITNESS: Scott Collier,
 7 Ruth Carter, Susan Langston, Lisa
 8 Sullivan, David White, Scott Garriott.
 9 I'm trying to think.
 10 QUESTIONS BY MS. MAINIGI:
 11 Q. And those were all folks that
 12 were in the field offices in years prior?
 13 A. Yeah, they were in the field.
 14 They've been -- they're in the field now.
 15 Q. Okay. So you're aware through
 16 your own experience in the field as well as
 17 the conversations you had that the
 18 requirement of the regulation and the statute
 19 is that suspicious orders generally are
 20 reported to the local or regional DEA
 21 offices, correct?
 22 A. Correct.
 23 Q. And then it's up to the local
 24 or regional DEA offices to ultimately make a
 25 decision about whether to investigate a

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1 suspicious order, correct?
 2 A. That's part of the process.
 3 The other part is if it's not in their area,
 4 then they would send it to that respective
 5 office. So that would be the other part.
 6 Q. But once it gets to the right
 7 regional office, it is incumbent upon that
 8 regional office to make a decision about what
 9 to do with a suspicious order, correct?
 10 A. Correct.
 11 Q. And is it fair to say not every
 12 suspicious order that is reported to a
 13 regional office actually results in some sort
 14 of investigation?
 15 MR. FINKELSTEIN: Asked and
 16 answered.
 17 THE WITNESS: Yes.
 18 QUESTIONS BY MS. MAINIGI:
 19 Q. Do you have any sense of how
 20 many, percentagewise, ballpark, of actual
 21 reported suspicious orders result in
 22 investigations by the DEA?
 23 MR. FINKELSTEIN: Scope. Asked
 24 and answered. Calls for speculation.
 25 THE WITNESS: No, I don't.

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1 we're talking about? That would help
 2 me a little bit.
 3 QUESTIONS BY MS. MAINIGI:
 4 Q. I'm sorry. Let's say 1996
 5 through 2006 for the first time period.
 6 A. So if they came in, then we
 7 would follow up with the registrant and ask:
 8 Why did you file this? Ask for a reason as
 9 to why you filed this. Because sometimes it
 10 was just a sheet of paper that said,
 11 diazepam, one bottle of 500. Well, that
 12 doesn't really give us much of a --
 13 information to act on, so we would have to
 14 follow up on that.
 15 Q. And I think you spoke to
 16 earlier the fact that sometimes suspicious
 17 orders would be called in to the regional
 18 office, correct?
 19 A. Yes.
 20 Q. And I assume that -- if we kind
 21 of use 1996 as a baseline, that in the late
 22 '90s, early aughts, there were often
 23 suspicious orders called in to the regional
 24 offices, true?
 25 MR. FINKELSTEIN: Scope. Calls

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1 QUESTIONS BY MS. MAINIGI:
 2 Q. Do you think more than half do?
 3 MR. FINKELSTEIN: Same
 4 objections.
 5 You can answer in your personal
 6 capacity.
 7 THE WITNESS: No, I don't. I
 8 don't know. I couldn't put a number
 9 on it.
 10 QUESTIONS BY MS. MAINIGI:
 11 Q. You don't have any sort of
 12 educated guess on that even?
 13 MR. FINKELSTEIN: Same
 14 objection.
 15 You can answer in your personal
 16 capacity.
 17 THE WITNESS: The reports that
 18 you got, it would be -- when we would
 19 go out, we would be like, was one
 20 filed or wasn't one filed.
 21 So if one was filed, then we
 22 would know -- we would typically go
 23 out and ask: Why did you file this?
 24 Because sometimes -- I mean, I
 25 don't know -- what is the time frame

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1 for speculation.
 2 THE WITNESS: I wouldn't say
 3 often. I mean, it was more the
 4 excessive purchase reports is what we
 5 got.
 6 QUESTIONS BY MS. MAINIGI:
 7 Q. Well, and I asked you to just
 8 focus on whatever universe of suspicious
 9 orders you got in that time period. Let's
 10 say late '90s, early aughts.
 11 Of the suspicious orders that
 12 were being reported in that time period, is
 13 it fair to say that a good number were called
 14 in to the regional offices?
 15 MR. FINKELSTEIN: Scope.
 16 Vague. Calls for speculation.
 17 THE WITNESS: I personally
 18 don't know because I worked in the
 19 Philadelphia office, so I don't know
 20 how registrants were reporting during
 21 that period in '96.
 22 QUESTIONS BY MS. MAINIGI:
 23 Q. But you were in the
 24 Philadelphia regional office, correct?
 25 A. Correct.

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1 Q. And were you generally aware of
 2 registrants calling in to report suspicious
 3 orders from time to time?
 4 MR. FINKELSTEIN: Scope.
 5 THE WITNESS: At that point, it
 6 was more chemicals. They were calling
 7 in chemicals.
 8 QUESTIONS BY MS. MAINIGI:
 9 Q. Because that --
 10 A. That would be it. It was the
 11 methamphet -- we had the methamphetamine
 12 epidemic at that point.
 13 Q. Because there was an obligation
 14 to report not just suspicious orders of
 15 controlled substances but suspicious orders
 16 of meth as well, true?
 17 A. Listed chemicals to -- that
 18 make meth.
 19 Q. But --
 20 A. We would have loved to have the
 21 means for meth, but...
 22 MR. FINKELSTEIN: Tom, answer
 23 the questions.
 24 QUESTIONS BY MS. MAINIGI:
 25 Q. The suspicious orders of -- the

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1 MR. FINKELSTEIN: Scope.
 2 You can answer, if you know.
 3 THE WITNESS: Don't know.
 4 QUESTIONS BY MS. MAINIGI:
 5 Q. You don't know how long the DEA
 6 was required to hold on to suspicious orders
 7 reported?
 8 MR. FINKELSTEIN: Scope.
 9 THE WITNESS: I don't know.
 10 QUESTIONS BY MS. MAINIGI:
 11 Q. Okay. And would the suspicious
 12 orders that were phoned or faxed in or mailed
 13 in, for that matter, to the regional offices,
 14 would they ever even find their way to
 15 headquarters for any reason?
 16 A. It was on --
 17 MR. FINKELSTEIN: Scope. Calls
 18 for speculation.
 19 THE WITNESS: If it was on a
 20 report it would, because the reports
 21 get -- go to headquarters.
 22 QUESTIONS BY MS. MAINIGI:
 23 Q. If it was on what type of
 24 report?
 25 A. One of our official reports.

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1 suspicious orders that were reported for
 2 controlled substances from time to time did
 3 get phoned in, correct?
 4 A. There were some that were
 5 phoned in, yes.
 6 Q. And there were some that were
 7 faxed in, correct?
 8 A. Correct.
 9 Q. And what are the other means
 10 that suspicious orders came in to the field
 11 offices?
 12 A. Mailed in. Pretty much it.
 13 They were phone, fax or mail.
 14 Q. Okay. And if a suspicious
 15 order was phoned in, how did the DEA then
 16 maintain a record of that suspicious order?
 17 MR. FINKELSTEIN: '96 to 2006?
 18 MS. MAINIGI: Sure. Go with
 19 that.
 20 THE WITNESS: Document.
 21 QUESTIONS BY MS. MAINIGI:
 22 Q. Documented?
 23 A. Document.
 24 Q. And then are those documents
 25 still in existence?

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1 Q. An internal report?
 2 A. An internal report, yes.
 3 Q. And what are some of the type
 4 of internal reports?
 5 You don't need to describe them
 6 for me, but just what are some of the types
 7 of internal reports that would get sent from
 8 the field offices to headquarters --
 9 MR. FINKELSTEIN: Scope.
 10 QUESTIONS BY MS. MAINIGI:
 11 Q. -- that would contain
 12 suspicious orders?
 13 MR. FINKELSTEIN: Scope.
 14 THE WITNESS: It could be
 15 scheduled investigation reports. It
 16 could be part of the preregistration.
 17 It could just be the suspicious order
 18 itself.
 19 QUESTIONS BY MS. MAINIGI:
 20 Q. And what are some of the
 21 reasons that the suspicious orders would be
 22 sent up to headquarters?
 23 A. We have a system that all
 24 reports have to go to this one section to
 25 update a system that we have.

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1 Q. That's the ARCOS system or some
 2 other system?
 3 A. No, some other system.
 4 Q. What's the name of the system?
 5 MR. FINKELSTEIN: Scope.
 6 THE WITNESS: I mean, it's --
 7 MR. FINKELSTEIN: Wait. Hang
 8 on. If this was law enforcement
 9 sensitive, don't testify.
 10 QUESTIONS BY MS. MAINIGI:
 11 Q. Is this related to law
 12 enforcement?
 13 A. Yes.
 14 Q. Okay. We can -- I can withdraw
 15 that question.
 16 Now, let me take you -- let me
 17 switch gears for a moment here.
 18 I think either -- I think the
 19 second day you testified, you were asked if
 20 the DEA agreed that if the distributor
 21 determined that an order is suspicious and
 22 should be blocked, the distributor should
 23 terminate all sales to that customer until
 24 they can rule out diversion is occurring.
 25 Do you recall that question?

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1 customer if you report an order to the DEA?
 2 MR. FINKELSTEIN: Asked and
 3 answered. Mischaracterizes the
 4 testimony.
 5 THE WITNESS: Well, it depends
 6 what they're -- what are they sending
 7 as the order. What is the order that
 8 they're saying is suspicious, correct?
 9 QUESTIONS BY MS. MAINIGI:
 10 Q. Well, the distributor reports a
 11 suspicious order for customer X.
 12 A. Of what?
 13 Q. Of controlled substances.
 14 A. So they're reporting the entire
 15 order as being suspicious?
 16 Q. Correct.
 17 That's what they're obligated
 18 to do, correct? Right?
 19 A. Correct.
 20 Q. Okay. So they report a
 21 suspicious order to the DEA for customer X.
 22 Customer X may have other
 23 orders that are pending down the line.
 24 Should the distributor cut off all orders to
 25 customer X?

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1 A. Yeah, I recall the question.
 2 Q. Vaguely?
 3 A. Vaguely.
 4 Q. Okay. Do you remember
 5 answering along the lines of yes to that
 6 question?
 7 A. I might have. I don't
 8 remember.
 9 Q. Well, is that the case?
 10 If the distributor determines
 11 an order is suspicious and should be blocked,
 12 the distributor needs to terminate all sales
 13 to a customer?
 14 MR. FINKELSTEIN: Incomplete
 15 hypothetical.
 16 QUESTIONS BY MS. MAINIGI:
 17 Q. Until they can rule out that
 18 diversion is occurring?
 19 A. Yeah, it should hold it until
 20 they can rule out the suspicion.
 21 Q. Now, has DEA ever issued any
 22 sort of guidance or pronouncement essentially
 23 saying that you must -- as a distributor in
 24 that circumstance, you must terminate all
 25 future controlled substance sales to a

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1 MR. FINKELSTEIN: Asked and
 2 answered. Incomplete hypothetical.
 3 THE WITNESS: Well, first of
 4 all, I think you started your
 5 statement with the DEA reports it.
 6 It's not DEA that reports the
 7 suspicious order. It's the registrant
 8 that --
 9 QUESTIONS BY MS. MAINIGI:
 10 Q. I'm sorry if I misspoke.
 11 A. That's fine. I just want to
 12 make sure we're clear on that.
 13 Q. Absolutely.
 14 A. So it's the registrant that
 15 has -- the system that they have has deemed a
 16 suspicious order, for a reason or reasons,
 17 that they believe that this will -- that has
 18 the potential to be diverted.
 19 Q. Correct.
 20 A. So that registrant has made the
 21 decision -- has -- from their system they've
 22 deemed it a suspicious order. So they should
 23 not ship until -- if they choose to, if they
 24 want to alleviate that suspicion. If they
 25 choose not to, then they shouldn't ship.

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1 But if they choose to, then it
 2 becomes they need to look into it further to
 3 alleviate that suspicion.
 4 MR. FINKELSTEIN: Let's --
 5 QUESTIONS BY MS. MAINIGI:
 6 Q. So they shouldn't ship the
 7 order, right?
 8 MR. FINKELSTEIN: Just a
 9 second. Let's take our final break
 10 when you're done with this line of
 11 questioning.
 12 QUESTIONS BY MS. MAINIGI:
 13 Q. So they shouldn't ship the
 14 order, right?
 15 MR. FINKELSTEIN: Incomplete
 16 hypothetical.
 17 THE WITNESS: When they deem --
 18 when they've determined that it's
 19 suspicious --
 20 QUESTIONS BY MS. MAINIGI:
 21 Q. Correct.
 22 A. -- a suspicious order?
 23 Correct.
 24 Q. They shouldn't ship it?
 25 A. Correct, they should not ship

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1 orders that may not appear suspicious.
 2 So let's say they take a while
 3 to investigate that particular suspicious
 4 order. They don't send it out. But in the
 5 meantime they have in the queue other orders
 6 from that pharmacy that do not look
 7 suspicious to them.
 8 MR. FINKELSTEIN: Incomplete --
 9 QUESTIONS BY MS. MAINIGI:
 10 Q. Are they okay to ship those
 11 orders?
 12 MR. FINKELSTEIN: Incomplete
 13 hypothetical.
 14 THE WITNESS: Well, I think if
 15 they have one in the queue that's
 16 already saying it's suspicious, then I
 17 would -- I would think that they would
 18 be at least questioning it like, well,
 19 what are they doing?
 20 QUESTIONS BY MS. MAINIGI:
 21 Q. Are they required to hold the
 22 other orders that they don't deem to be
 23 suspicious, or is it okay to exercise their
 24 business judgment to send those orders on?
 25 MR. FINKELSTEIN: Asked and

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1 it.
 2 Q. Okay. But they could choose to
 3 ship it if they wanted to. That's a business
 4 judgment, right?
 5 MR. FINKELSTEIN:
 6 Mischaracterizes prior testimony.
 7 THE WITNESS: They could ship
 8 it if they -- yeah, it's a business
 9 decision.
 10 QUESTIONS BY MS. MAINIGI:
 11 Q. So let's say they choose to not
 12 ship it and hold the order. Are they then
 13 required to not ship any orders to that same
 14 customer?
 15 MR. FINKELSTEIN: Incomplete
 16 hypothetical. Asked and answered.
 17 THE WITNESS: Have they
 18 alleviated the suspicion? Did they do
 19 anything to alleviate the suspicion?
 20 If they haven't alleviated the
 21 suspicion, then it's still a
 22 suspicious order.
 23 QUESTIONS BY MS. MAINIGI:
 24 Q. Okay. I'm not talking about
 25 that order; I'm talking about any additional

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1 answered. Incomplete hypothetical.
 2 And I'd appreciate the break.
 3 THE WITNESS: Could you please
 4 repeat it?
 5 QUESTIONS BY MS. MAINIGI:
 6 Q. Are they required to hold the
 7 other orders that they don't view to be
 8 suspicious, or is it okay for the distributor
 9 in that instance to exercise their business
 10 judgment and send those nonsuspicious orders
 11 out?
 12 MR. FINKELSTEIN: Asked and
 13 answered. Incomplete hypothetical.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MS. MAINIGI:
 16 Q. Yes what?
 17 A. They can.
 18 Q. Okay. They can ship those
 19 other orders out?
 20 A. Yes.
 21 MS. MAINIGI: Okay. Let's go
 22 ahead and take your break.
 23 VIDEOGRAPHER: We're going off
 24 record. The time is 4:53.
 25 (Off the record at 4:53 p.m.)

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1 VIDEOGRAPHER: We're going back
 2 on record, beginning of Media File
 3 Number 12. The time is 5:03.
 4 QUESTIONS BY MS. MAINIGI:
 5 Q. So, Mr. Prevoznik, just
 6 following up on our last line of questioning,
 7 is it fair to say that DEA has no internal
 8 policy defining the circumstances under which
 9 a distributor is required to terminate the
 10 distribution of controlled substances to a
 11 pharmacy?
 12 MR. FINKELSTEIN: Objection.
 13 Mischaracterizes his prior testimony.
 14 THE WITNESS: Could you please
 15 repeat that?
 16 QUESTIONS BY MS. MAINIGI:
 17 Q. Sure.
 18 Is it fair to say that DEA has
 19 no internal policy defining the circumstances
 20 under which a distributor is required to
 21 terminate the distribution of controlled
 22 substances to a pharmacy?
 23 A. Yes.
 24 Q. Now, do you recall being asked
 25 last time a number of questions about the

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1 Q. Okay. And the NWDA, just for
 2 the record, is the National Wholesale
 3 Druggists' Association?
 4 A. Yes.
 5 Q. And that was the trade
 6 organization for distributors at this point
 7 in time, which is about 1993?
 8 A. Yes.
 9 Q. Now, can you tell us your
 10 understanding of the purpose of this document
 11 that describes the NWDA suspicious order
 12 monitoring system?
 13 MR. FINKELSTEIN: Calls for
 14 speculation.
 15 THE WITNESS: I think it was --
 16 the association was assisting their
 17 members to come up with a suspicious
 18 order monitoring system that they
 19 could use.
 20 QUESTIONS BY MS. MAINIGI:
 21 Q. And it appears that the NWDA
 22 was working at that point in time with both
 23 DOJ and the DEA in establishing controls
 24 aimed at reducing diversion, fair?
 25 MR. FINKELSTEIN: Scope. Calls

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1 NWDA suspicious order monitoring system? And
 2 we may have even looked at it today.
 3 Do you remember that?
 4 A. Yes.
 5 Q. And I believe it was
 6 Exhibit P7. If you don't have it handy, I am
 7 sure we can get you a new copy.
 8 MR. FINKELSTEIN: May the
 9 record reflect that James is now
 10 screwing with my exhibits, but I
 11 appreciate it.
 12 MS. MAINIGI: I think that's
 13 obvious. It doesn't even need to be
 14 reflected on the record.
 15 QUESTIONS BY MS. MAINIGI:
 16 Q. You got one, Mr. Prevoznik?
 17 A. Yes.
 18 Q. Okay. Perfect.
 19 And I think it had been
 20 previously marked P7 for the record.
 21 Now, you testified you were --
 22 you were familiar with this document. You
 23 had looked at it in preparation for your
 24 deposition?
 25 A. Yes.

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1 for speculation.
 2 THE WITNESS: I'm not sure
 3 where I see DOJ.
 4 I see DEA listed. I don't see
 5 DOJ.
 6 QUESTIONS BY MS. MAINIGI:
 7 Q. So if we take a look at page 1
 8 of the NWDA document, Mr. Prevoznik --
 9 A. Yes.
 10 Q. -- second paragraph under
 11 background, could you read that out loud?
 12 A. "The National Wholesale
 13 Druggists' Association voluntarily began
 14 working with the Department of Justice, Drug
 15 Enforcement Administration, in establishing
 16 controls clearly aimed at reducing or
 17 eliminating illegal product distribution."
 18 Q. And why would the DEA have
 19 worked with this trade organization to help
 20 develop these controls?
 21 MR. FINKELSTEIN: Foundation.
 22 Calls for speculation.
 23 THE WITNESS: To protect the
 24 public.
 25

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1 QUESTIONS BY MS. MAINIGI:
 2 Q. And the DEA at that point in
 3 time thought it was a good thing to help a
 4 trade organization develop guidelines because
 5 it would help everybody, correct?
 6 MR. FINKELSTEIN: Foundation.
 7 Calls for speculation.
 8 THE WITNESS: I -- yeah, I
 9 mean -- yeah.
 10 QUESTIONS BY MS. MAINIGI:
 11 Q. Most of all, it would help the
 12 public, as you said?
 13 A. Yes.
 14 Q. Now, the system -- I think you
 15 went over this earlier. The system that they
 16 came up with had two components to it, right?
 17 It had the monthly after-the-fact reporting?
 18 A. Are you on a specific page?
 19 Q. It had the monthly
 20 calculations, page 2.
 21 Do you see it?
 22 MR. FINKELSTEIN: Page 2 where?
 23 MS. MAINIGI: Page 2 under
 24 monthly calculations.
 25 MR. FINKELSTEIN: Okay.

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1 in a specific way; is that right?
 2 MR. FINKELSTEIN: Vague as to
 3 time.
 4 THE WITNESS: That's correct.
 5 QUESTIONS BY MS. MAINIGI:
 6 Q. And the DEA worked with NWDA to
 7 come up with a reporting system for the
 8 monthly after-the-fact reports, correct?
 9 MR. FINKELSTEIN: Foundation.
 10 Scope.
 11 THE WITNESS: From my review of
 12 the document, yes.
 13 QUESTIONS BY MS. MAINIGI:
 14 Q. And those monthly
 15 after-the-fact reports were sometimes called,
 16 but not always, excessive purchase reports,
 17 true?
 18 A. Yes, correct.
 19 Q. So in working with the NWDA,
 20 the DEA essentially supported the concept of
 21 two tiers of reporting, true?
 22 A. The excessive purchase after
 23 the fact and identifying the suspicious order
 24 prior to shipping? Yes.
 25 Q. And is it fair to say that a

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1 THE WITNESS: Okay.
 2 QUESTIONS BY MS. MAINIGI:
 3 Q. And then it had -- so was that
 4 the monthly after-the-fact reporting?
 5 A. Yes.
 6 Q. Okay. And so essentially --
 7 and then I think it's further described at
 8 page 4.
 9 Do you see that?
 10 A. Where specifically on page 4?
 11 The report --
 12 Q. I think the top, the top part
 13 of page 4. It kind of rolls into page 3 and
 14 then the top part of page 4.
 15 A. Okay.
 16 Q. And then this also -- I think
 17 Mr. Farrell asked you, and Ms. Singer may
 18 have as well. On page 7, there's a part 2 to
 19 the reporting. In addition to the
 20 after-the-fact monthly reporting, there's a
 21 reference to the single suspicious orders.
 22 Do you see that?
 23 A. Yes.
 24 Q. Now, the DEA did not require
 25 the single suspicious orders to be reported

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1 distributor that was sending in the excessive
 2 purchase reports after the fact and was
 3 calling or faxing in suspicious orders was in
 4 compliance with these guidelines that DEA
 5 worked on with the NWDEA [sic]?
 6 MR. FINKELSTEIN: Vague.
 7 Incomplete hypothetical. Scope.
 8 THE WITNESS: So again, this
 9 goes back to the design and the
 10 operating. So this is the design.
 11 So what -- what did the
 12 registrant do to operate? I don't
 13 know. It's --
 14 QUESTIONS BY MS. MAINIGI:
 15 Q. Well, in my hypothetical -- in
 16 my hypothetical, Mr. Prevoznik, if the
 17 registrant was submitting the excessive
 18 purchase reports pursuant to some of the
 19 guidelines in this document, the NWDA
 20 document, and calling in suspicious orders,
 21 that's the execution, right?
 22 They were essentially in
 23 compliance with at least these guidelines
 24 that the NWDA put out, right?
 25 MR. FINKELSTEIN: Incomplete

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1 hypothetical. Scope.
 2 THE WITNESS: I don't have
 3 enough information to make that
 4 determination because there could
 5 be -- it could be just what they're
 6 reporting. There could be a whole
 7 bunch of things they're not reporting
 8 to us.
 9 So it goes back to these are --
 10 these are the orders that they did
 11 report, and these are the orders they
 12 did not report, which is essentially
 13 why a lot of -- we took enforcement
 14 actions on quite a few of these
 15 distributors because they were not
 16 reporting.
 17 So it's only based on what
 18 they're reporting to us.
 19 QUESTIONS BY MS. MAINIGI:
 20 Q. Operationally, however, having
 21 a two-tier system in place that includes the
 22 excessive purchase reports and then the
 23 reporting separately of suspicious orders,
 24 operationally in this time period, in the
 25 late '90s, that was a system that certainly

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1 leaving it up to the -- to the
 2 registrant to do that, because it --
 3 in here it's with the -- the number 9,
 4 single suspicious order, we determined
 5 orders to mean prior to shipment. So
 6 it's incumbent upon that registrant.
 7 So this is -- this is a
 8 whole -- this is a wholesaler
 9 association, so its members are going
 10 to put this into -- implement it into
 11 their system. So if they're following
 12 what they're supposed to be doing,
 13 then you would hope that it was
 14 identifying the suspicious orders as
 15 they should have.
 16 QUESTIONS BY MS. MAINIGI:
 17 Q. Well, let's take a look. We
 18 remember Mr. Gitchel, right? Let's take a
 19 look at what he wrote.
 20 And I think we've got a couple
 21 of letters of his attached that relate to
 22 this system.
 23 So if you take a look at the
 24 very last page, page 11, Mr. Gitchel, who at
 25 that point was -- what was his role?

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1 seemed to make sense to the DEA, correct?
 2 MR. FINKELSTEIN: Foundation.
 3 THE WITNESS: I think it made
 4 sense in terms of the -- at this point
 5 we were in -- we were dealing with the
 6 meth situation. We were -- and I
 7 think I believe I testified to this,
 8 that this was more -- at this point
 9 this was more of a regional issue.
 10 With the on -- with the
 11 Internet and things like that where it
 12 became a national thing, that's when
 13 it was -- that's when orders were
 14 clearly not being reported to us.
 15 QUESTIONS BY MS. MAINIGI:
 16 Q. So my question was a little bit
 17 different, right?
 18 The structure itself for the
 19 late -- that was in place in the late '90s,
 20 as outlined by the NWDA suspicious order
 21 monitoring system document, that was a system
 22 that the DEA thought worked for that time
 23 period, correct?
 24 MR. FINKELSTEIN: Foundation.
 25 THE WITNESS: I think they were

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1 A. He was the IP chief over
 2 operations, diversion operations.
 3 Q. So he was the top dog, right,
 4 in diversion at DEA?
 5 A. Just over operations.
 6 Q. And he was communicating with a
 7 lot of people during this time period, right?
 8 We've seen a few of his letters?
 9 A. Yes.
 10 Q. Okay. And if you take a look
 11 at the letter which is on page 11, he writes
 12 a letter to Ronald Streck of the National
 13 Wholesale Druggists' Association, right?
 14 A. Yes.
 15 Q. Okay. And did you review this
 16 letter in preparation for your deposition
 17 here today?
 18 A. Yes. In the past I did, yes.
 19 Q. Okay. So you're familiar with
 20 this letter?
 21 A. (Witness nods head.)
 22 Q. Can you read -- do you see a
 23 sentence that begins with "this system" in
 24 the middle of the first paragraph?
 25 A. "This system as proposed will

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1 test the reporting" -- will test or meet --
 2 "will meet the reporting requirements of 21
 3 CFR 1301.74(b)."
 4 Q. So what does that mean to you?
 5 MR. FINKELSTEIN: Calls for
 6 speculation.
 7 THE WITNESS: I'm not sure what
 8 he's saying, because the next two
 9 sentences below that are -- he's --
 10 QUESTIONS BY MS. MAINIGI:
 11 Q. Well, what's he saying in this
 12 sentence?
 13 MR. FINKELSTEIN: Let the
 14 witness finish his answer.
 15 THE WITNESS: The next two
 16 sentences after that are talking about
 17 the after-the-fact sales, and it
 18 doesn't relieve the registrant from
 19 the responsibility of reporting
 20 excessive or suspicious orders.
 21 So -- and he clearly, again,
 22 reiterates what I've been saying.
 23 DEA's interpreted orders to mean prior
 24 to shipment.
 25

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1 me again that begins with "this system."
 2 A. "This system, as proposed, will
 3 meet the reporting requirements of 21 CFR
 4 1301.74."
 5 Q. And what is 1301.74(b) of 21
 6 CFR?
 7 A. Suspicious orders.
 8 Q. Okay. So Mr. Gitchel, who's
 9 acting chief of diversion operations, is
 10 saying in this letter that this two-component
 11 system that we've been discussing, as
 12 proposed, will meet the reporting
 13 requirements of suspicious orders, correct?
 14 A. That's what it says.
 15 Q. And so a distributor --
 16 MR. FINKELSTEIN: I signaled
 17 ten minutes remaining to the witness.
 18 QUESTIONS BY MS. MAINIGI:
 19 Q. A distributor, Mr. Prevoznik,
 20 who in that time period followed this system
 21 that NWDA proposed, their system, at least,
 22 would be in compliance with 21 CFR
 23 1301.74(b), correct?
 24 MR. FINKELSTEIN: Incomplete
 25 hypothetical.

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1 QUESTIONS BY MS. MAINIGI:
 2 Q. Okay. So we just went over
 3 this system that the DEA obviously had input
 4 into that included two components, right?
 5 A. Yes.
 6 Q. And the two components -- what
 7 was the first component?
 8 A. It was the after sales.
 9 Q. Okay. So the excessive
 10 purchase, right?
 11 A. Yes.
 12 Q. What was the second component?
 13 A. The -- let me check. The
 14 suspicious orders.
 15 Q. Right.
 16 So those are the two components
 17 of the NWDA system, right?
 18 A. Yes.
 19 Q. And the sentences that he's got
 20 after the one I asked you to read, he's
 21 essentially saying, doing the first doesn't
 22 relieve you of the obligation to do the
 23 second, right?
 24 A. Correct.
 25 Q. Okay. So read that sentence to

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1 THE WITNESS: Yes, but this
 2 date is 1984. You've been asking me
 3 1996 to 2006, so -- so, yeah, 1984.
 4 QUESTIONS BY MS. MAINIGI:
 5 Q. Do you -- are you aware of any
 6 communication by Mr. Gitchel subsequently
 7 that overruled his statements?
 8 MR. FINKELSTEIN: Scope.
 9 THE WITNESS: Not to my
 10 knowledge.
 11 QUESTIONS BY MS. MAINIGI:
 12 Q. Now, in this letter that
 13 Mr. Gitchel wrote, he doesn't say anything
 14 about halting shipment of excessive or
 15 suspicious orders, right?
 16 A. No.
 17 Q. Now, the next time there is
 18 some sort of communication with the industry
 19 in written form, or an industry group in
 20 written form, about approaches to suspicious
 21 order monitoring are Mr. Rannazzisi's letters
 22 in 2006 and 2007, right?
 23 MR. FINKELSTEIN: Foundation.
 24 THE WITNESS: No, we had -- we
 25 had those conferences. I mean, I

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1 think we had one from 1987, the one in
 2 San Antonio, so we were meeting with
 3 manufacturers and distributors.
 4 QUESTIONS BY MS. MAINIGI:
 5 Q. The one in 2007?
 6 A. No. 19 -- it's in here
 7 somewhere.
 8 Q. Well, just listen to my
 9 question, though.
 10 A. Sure.
 11 Q. So Mr. Gitchel was
 12 communicating with a trade group, right?
 13 A. Yes.
 14 Q. The National Wholesale
 15 Druggists' Association, right?
 16 A. Yes.
 17 Q. And that was a trade group that
 18 communicated then with its distributors, its
 19 member distributors, right?
 20 MR. FINKELSTEIN: Calls for
 21 speculation.
 22 THE WITNESS: Yes.
 23 QUESTIONS BY MS. MAINIGI:
 24 Q. And distributor conferences or
 25 conferences that DEA has, those are

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1 MR. FINKELSTEIN: Foundation.
 2 THE WITNESS: Yes.
 3 QUESTIONS BY MS. MAINIGI:
 4 Q. And obviously we had
 5 conversations previously about the statements
 6 in those letters, right?
 7 A. Yes.
 8 Q. Now, prior to Mr. Rannazzisi's
 9 letters, you all, the DEA, began the
 10 distributor initiative, right?
 11 MR. FINKELSTEIN: Asked and
 12 answered.
 13 THE WITNESS: Yes.
 14 QUESTIONS BY MS. MAINIGI:
 15 Q. And I think you mentioned that
 16 some of the earlier distributor initiatives
 17 took place in the fall of 2005; is that
 18 right?
 19 MR. FINKELSTEIN: Asked and
 20 answered.
 21 THE WITNESS: I actually think
 22 it was August. Some of the documents
 23 today were August.
 24 QUESTIONS BY MS. MAINIGI:
 25 Q. Okay. Do you want to find your

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1 definitely important, but there's no
 2 guarantee that you're going to reach every
 3 single distributor out there, right?
 4 A. No, but I thought you were
 5 asking what guidance DEA has given.
 6 Q. No.
 7 A. Okay.
 8 Q. The question that I asked you
 9 was: So Mr. Gitchel wrote a communication to
 10 the NWDA which theoretically could have been
 11 shared with its member distributors, right?
 12 MR. FINKELSTEIN: Calls for
 13 speculation.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MS. MAINIGI:
 16 Q. And it gave them some guidance
 17 about their suspicious order monitoring
 18 system, correct?
 19 A. Correct.
 20 Q. And next time the DEA issued
 21 any sort of guidance, or anything that could
 22 be called guidance, in a written form out to
 23 all distributors about their suspicious order
 24 monitoring systems was in the form of
 25 Mr. Rannazzisi's letters in 2006, 2007?

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1 document? Let's find the Cardinal one.
 2 There's a meeting with
 3 Cardinal, and you're right, it's August. At
 4 least the date of this memo is August 23,
 5 2005.
 6 A. August 23rd, got it. P23.
 7 Q. Perfect. Thank you.
 8 Now, you did not attend this
 9 meeting with Cardinal Health, right?
 10 MR. FINKELSTEIN: Asked and
 11 answered.
 12 THE WITNESS: No.
 13 QUESTIONS BY MS. MAINIGI:
 14 Q. Mr. Mapes and Ms. Seeger
 15 attended the meeting?
 16 A. Yes.
 17 Q. And all DEA has at this point
 18 in time reflective of what got said or not
 19 said at this meeting is this memo and the
 20 attached PowerPoint, true?
 21 A. Yes.
 22 Q. What points were emphasized at
 23 this meeting in 2005 versus any meeting that
 24 took place in 2009, 2010, you're not in a
 25 position to say beyond the documents you have

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1 in front of you, correct?
 2 A. Correct.
 3 Q. Now, look at the last paragraph
 4 of this memo. Do you see that Cardinal was
 5 requesting that DEA provide them with certain
 6 information?
 7 A. Yes.
 8 Q. Do you know if the DEA ever
 9 provided Cardinal with that information it
 10 was seeking?
 11 MR. FINKELSTEIN: Scope.
 12 THE WITNESS: I don't know.
 13 MR. FINKELSTEIN: Vague.
 14 QUESTIONS BY MS. MAINIGI:
 15 Q. Now, do you recall the industry
 16 group that represented distributors at some
 17 point morphed its name into HDMA, correct?
 18 A. Correct.
 19 Q. So it went from NWDA to HDMA,
 20 right?
 21 A. Yeah. I don't know if there
 22 was one in between, but, yes.
 23 Q. And now I think they're HDA.
 24 Does that sound right to you?
 25 A. Yeah.

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1 A. Can you repeat it?
 2 Q. Sure.
 3 Do you recall from the time
 4 period of about 2007 to 2013, DEA did not
 5 want to sit down with HDMA to provide them
 6 with guidance or guidelines related to an
 7 adequate suspicious order monitoring system?
 8 A. Yes.
 9 Q. "Yes" meaning they did not want
 10 to sit down with HDMA?
 11 A. Right.
 12 Q. Whereas in the late '90s, we
 13 saw that they were willing to sit down with
 14 HDMA, right?
 15 A. Correct.
 16 Q. And sitting down with HDMA or
 17 its predecessor organization in the late '90s
 18 helped the public, right?
 19 MR. FINKELSTEIN: Calls for
 20 speculation.
 21 QUESTIONS BY MS. MAINIGI:
 22 Q. Isn't that what you told me, it
 23 helped the public?
 24 A. What, by meeting with them?
 25 Q. Yes.

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1 Q. I don't know why they keep
 2 changing their names.
 3 But do you recall that that was
 4 a group that continued to want to meet with
 5 DEA to continue to give guidance on how to
 6 update their suspicious order monitoring
 7 systems?
 8 MR. FINKELSTEIN: Scope. Calls
 9 for speculation.
 10 THE WITNESS: Yes.
 11 QUESTIONS BY MS. MAINIGI:
 12 Q. Do you recall though that
 13 within DEA there was an evolution of thought
 14 related to dealing with groups like HDMA
 15 where, let's say, from 2007 through to 2013
 16 DEA did not want to sit down and provide
 17 specific guidance or guidelines to the HDMA's
 18 of the world as to how to put their
 19 suspicious order monitoring systems together?
 20 MR. FINKELSTEIN: Scope.
 21 Foundation.
 22 THE WITNESS: Is that a
 23 question?
 24 QUESTIONS BY MS. MAINIGI:
 25 Q. Yes.

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1 A. Yes. Well, we hoped that it
 2 helped the public, yes. But, again, it's the
 3 registrants that have to design the system
 4 and operate the system. It's not NWDA, and
 5 it's not HDA, and it's not HDMA. It's the
 6 registrant, which is why we shifted to that.
 7 Q. Okay. You didn't want to sit
 8 down with HDMA to help the public?
 9 A. No.
 10 MR. FINKELSTEIN: Wait. Vague.
 11 Argumentative. Mischaracterizes prior
 12 testimony.
 13 THE WITNESS: No, we sat
 14 with -- we did the distributor
 15 initiative because of what we saw, and
 16 we saw that the registrants needed to
 17 be -- have -- to sit down with the
 18 registrants, talk to them and go over
 19 their own data with them to show the
 20 anomalies that are going on, in the
 21 hope that they would stop what they
 22 were doing.
 23 They said they were going to
 24 fix it; they didn't fix it. So we
 25 weren't going to go to a trade

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1 association if the registrant isn't
 2 going to fix their own internal system
 3 that they have.
 4 MR. FINKELSTEIN: One minute,
 5 Ms. Mainigi.
 6 QUESTIONS BY MS. MAINIGI:
 7 Q. With respect to -- you made
 8 some reference, and I think you're doing it
 9 again, to some failures in the industry. Do
 10 you remember that? Failures by the industry
 11 to comply.
 12 Do you remember having those
 13 discussions with Ms. Singer earlier today?
 14 A. Yes.
 15 Q. Okay. And by "failures in the
 16 industry," I assume you're referring to the
 17 various legal actions that distributors had
 18 with Cardinal, true? Or excuse me, the
 19 various legal actions that distributors had
 20 with DEA, true?
 21 A. Yes.
 22 Q. And so various distributors at
 23 various points in time entered into legal
 24 settlements with the DEA, true?
 25 A. True.

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1 CERTIFICATE
 2
 3 I, CARRIE A. CAMPBELL, Registered Diplomat Reporter,
 4 Certified Realtime Reporter and Certified Shorthand Reporter, do hereby certify
 5 that prior to the commencement
 6 of the examination, Thomas Prevoznik was duly sworn by me
 7 to testify to the truth, the
 8 whole truth and nothing but the truth.
 9 I DO FURTHER CERTIFY that the foregoing is a verbatim
 10 transcript of the
 11 testimony as taken stenographically by and before me at the
 12 time, place and on the date
 13 hereinbefore set forth, to the best of my ability.
 14
 15 I DO FURTHER CERTIFY that I am
 16 neither a relative nor employee nor attorney nor counsel of
 17 any of the parties to this
 18 action, and that I am neither a relative nor employee of such
 19 attorney or counsel, and
 20 that I am not financially interested in the action.
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Prevoznik, Thomas

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1 ACKNOWLEDGMENT OF DEPONENT

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3

4 I, _____, do hereby certify that I have
 5 read the foregoing
 6 pages and that the same is a correct transcription of the
 7 answers given by me to
 8 the questions therein propounded, except for the corrections
 9 or changes in form or
 10 substance, if any, noted in the attached Errata Sheet.

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12 _____ Thomas

13 Prevoznik, Volume III DATE

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15 Subscribed and sworn to before me this

16 _____ day of _____, 20 _____.

17 My commission expires: _____

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19 Notary Public

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05-17-2019

Prevoznik, Thomas

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1 LAWYER'S NOTES

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Prevoznik, Thomas

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1 ERRATA

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3 PAGE LINE CHANGE/REASON

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